

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF OHIO
3 EASTERN DIVISION

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5
6 IN RE: NATIONAL PRESCRIPTION
7 OPIATE LITIGATION

8 MDL No. 2804
9 Case No. 1:17-MD-2804
10 THIS DOCUMENT RELATES Hon. Dan A. Polster
11 TO ALL CASES

12 HIGHLY CONFIDENTIAL
13
14 SUBJECT TO FURTHER CONFIDENTIALITY REVIEW
15

16 ~~~~~
17 Video Deposition of
18 JENNIFER DIEBERT

19 JANUARY 24, 2019
20 8:05 a.m.
21 Location:
22 Renaissance Toledo Downtown Hotel
23 444 North Summit Street
24 Toledo, Ohio

25 Todd L. Persson, Notary Public

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1 THE VIDEOGRAPHER: We are now on the
2 record. My name is Stephan Hoog. I'm the
3 videographer for Golkow Litigation Services.
4 Today's date is January 24, 2019. The time is
5 8:05 a.m., as indicated on the video screen.

6 This deposition is being held in
7 Toledo, Ohio, in the matter of National
8 Prescription Opiate Litigation, MDL 2804. The
9 deponent is Jen Diebert. Counsel will be noted on
10 the stenographic record.

11 The court reporter is Todd Persson,
12 and will swear in the witness.

13 JENNIFER DIEBERT, of lawful age, called for
14 examination, as provided by the Federal Rules of
15 Civil Procedure, being by me first duly sworn, as
16 hereinafter certified, deposed and said as
17 follows:

18 EXAMINATION OF JENNIFER DIEBERT

19 BY MR. GADDY:

20 Q. State your name, please.

21 A. Jennifer Diebert.

22 Q. And, Ms. Diebert, you work at Walgreens?

23 A. I do.

24 Q. How long have you been at Walgreens?

25 A. 16 years.

1 Q. You started in 2003?

2 A. '03, yeah.

3 Q. Has your entire time with Walgreens been
4 at the Walgreens Distribution Center in
5 Perrysburg, Ohio?

6 A. Yes.

7 Q. Does that distribution center in
8 Perrysburg, Ohio distribute prescription drugs to
9 Walgreens stores within Ohio?

10 A. We distribute PSE drugs, but we don't
11 distribute any other prescription drugs from the
12 DC currently.

13 Q. Okay. I'm interested in the geographic
14 region as to which that store --

15 A. We do distribute products to Ohio.

16 Q. Okay. Do you distribute products to
17 Kentucky?

18 A. I believe we do have a couple of stores
19 in Kentucky that we distribute to.

20 Q. Okay. Do you distribute product to West
21 Virginia?

22 A. We have two or three locations in the tip
23 of West Virginia that we send orders to.

24 Q. Do you distribute products to Indiana?

25 A. Yes, we do.

1 Q. Do you distribute product to Illinois?

2 A. We do have some stores in Illinois that
3 we send orders to as well.

4 Q. Just a minute ago you used the acronym
5 "PSE." That's referring to pseudoephedrine?

6 A. Pseudoephedrine items.

7 Q. Okay. When you began with Walgreens at
8 the distribution center in Perrysburg, was
9 Walgreens at that time distributing controlled
10 substances?

11 MS. SWIFT: Object to the form.

12 A. Yes, we were. I believe we were
13 distributing C-III through Vs at the time.

14 Q. And at some point in time while you were
15 at Perrysburg did that distribution center
16 distribute Schedule II controlled substances?

17 A. I'm sorry, during which time?

18 Q. Any time.

19 A. We did distribute while I've been working
20 there Schedule II narcotics, yes.

21 Q. About when did the Perrysburg
22 distribution center begin distributing Schedule II
23 narcotics?

24 MS. SWIFT: Object to form.

25 A. I -- I don't recall the date that we

1 started doing that.

2 Q. But you did it while you were there?

3 A. Yes.

4 Q. And would it be fair to say that the
5 Perrysburg distribution center continued to
6 distribute Schedule II and III narcotics up until
7 approximately 2013?

8 A. Yes.

9 Q. Can you tell me what time period, as far
10 as -- you know, and I understand this would be an
11 estimate -- but as far as when to when the
12 Walgreens distribution center in Perrysburg
13 distributed Schedule II controlled substances?

14 MS. SWIFT: Object to the form.

15 A. I -- I don't recall the date that we
16 started doing orders for Schedule IIs. I wasn't
17 in a position at that time that handled them or
18 processed their orders, or anything, so I -- I
19 couldn't tell you.

20 Q. Okay. Do you have a best guess?

21 MS. SWIFT: Object to the form.

22 A. No.

23 Q. When's the first time that you can say
24 you know for sure that Perrysburg was distributing
25 Schedule II drugs?

1 MS. SWIFT: Object to the form.

2 A. I'm sorry, I don't recall.

3 Q. Does the distribution center in
4 Perrysburg have a vault?

5 MS. SWIFT: Object to the form.

6 A. We do have a location in the DC that is
7 locked that we use to house the controlled
8 substances.

9 Q. Okay. And there's no controlled
10 substances stored there now; is that correct?

11 A. That is correct.

12 Q. But during the period of time that
13 Perrysburg did distribute controlled substances,
14 they were -- they were stored there within the
15 vault?

16 A. That is correct.

17 Q. And you're aware that there were rules
18 and regulations regarding the storage of
19 controlled substances?

20 A. I don't know what the rules and
21 regulations were.

22 Q. And sorry if my question wasn't clear,
23 but I'm not asking you what they were. I'm just
24 asking you whether or not you knew that they
25 existed?

1 A. I do not know. I don't know what rules
2 and regulations Walgreens may or may not have. I
3 wasn't in a position to have that knowledge.

4 Q. You don't know whether or not there are
5 any rules or regulations regarding the storage of
6 controlled substances?

7 A. I don't know what the rules are.

8 Q. I'm not asking you if you know what they
9 are. I'm asking if you know that there are rules?

10 A. I -- I don't -- I was not in any position
11 to know whether there were or were not rules. I
12 couldn't answer that question. I don't know.

13 Q. Do you have any background as a
14 pharmacist?

15 A. No, I don't.

16 Q. Have you ever worked in a Walgreens
17 pharmacy?

18 A. No.

19 Q. Do you have any -- or have you received
20 any training or education on the rules or
21 regulations regarding dispensing of controlled
22 substances?

23 A. No, I have not.

24 Q. Do you have any understanding regarding
25 the duties of a pharmacist to ensure that

1 prescriptions that they dispense are medically
2 necessary?

3 A. No, I don't.

4 Q. Do you have an understanding that there
5 are rules and regulations regarding the
6 distribution of controlled substances?

7 A. I'm sorry, repeat one more time.

8 Q. Sure. Do you have an understanding that
9 there are rules and regulations regarding the
10 distribution of controlled substances?

11 A. I don't know what rules or regulations
12 there may be regarding that.

13 Q. Do you have an understanding that there
14 are rules and regulations regarding --

15 A. Not pertaining to anything that the DC
16 does. I have no idea what rules or regulations we
17 may have had.

18 Q. You don't know if there are rules or
19 regulations?

20 A. I don't know if there are any rules or
21 regulations pertaining to the distribution of
22 C-IIs or C-III through Vs. I don't know what they
23 are.

24 Q. So for the 16 years that you've been at
25 Walgreens in the Perrysburg, Ohio distribution

1 center, throughout that entire time period and in
2 any regular duties or responsibilities or training
3 or education you've received by Walgreens, you've
4 never come to understand whether or not there are
5 any rules or regulations regarding the
6 distribution of controlled substances?

7 MS. SWIFT: Object to the form.

8 A. I have not been in a position during my
9 time there from when I started that I had any
10 control or knowledge over the actual distribution
11 of the drugs, so I don't know what the regulations
12 would have been.

13 Q. And maybe we're just misunderstanding
14 each other. I'm not asking you to tell me what
15 the regulations are. I'm just asking whether or
16 not you have an appreciation that there are
17 regulations?

18 A. I don't know what the regulations may
19 have been.

20 Q. Do you know that there were regulations?

21 A. I don't know what regulations there are
22 for narcotics now or then.

23 Q. During your entire time at Walgreens,
24 nobody ever gave you any training or education on
25 any regulations that applied to the distribution

1 of controlled substances?

2 MS. SWIFT: Object to the form.

3 A. There was no reason for me to know that,
4 so I don't recall what they may have been.

5 Q. I'm not asking whether or not you believe
6 there was a reason for you to know it or not. My
7 question is whether or not during the 16 years
8 that you were at the distribution center in
9 Perrysburg, Ohio, were you ever given any training
10 or education by Walgreens on the regulations that
11 applied to the distribution of controlled
12 substances?

13 MS. SWIFT: Object to the form.

14 A. I don't recall if I ever received
15 training on it. I wasn't in a position to deal
16 with those kind of orders, or have any reason to
17 know if there was regulations. So if I did
18 receive training, I do not recall having that.

19 Q. So the answer to the question is you
20 don't remember ever getting any training on any
21 regulations regarding the distribution of
22 controlled substances?

23 MS. SWIFT: Object to the form.

24 A. There was no need for me to know if there
25 were regulations for that.

1 Q. But regardless -- I understand you don't
2 think there was any reason for you to know. But
3 you don't recall ever getting any training on it?

4 A. I do not --

5 MS. SWIFT: Object to the form.

6 A. -- I do not recall getting training for
7 regulations for narcotics shipping out of the DC.

8 Q. So, Ms. Diebert, what I want to try to do
9 is get an understanding of what your specific role
10 or title was within the distribution center going
11 back to 2003 up until today, okay?

12 A. Okay.

13 Q. So if you would, start in 2003, and
14 explain to me what your role was and how long you
15 were in that role.

16 A. In 2003 I was an MPB clerk, which simply
17 means that I was responsible for contacting other
18 departments to try and make sure that the orders
19 were as complete as possible, the self-service
20 role orders, or non-pharmacy, and putting out
21 paperwork for the drivers to deliver their routes.
22 That was the main purpose of my position at that
23 time.

24 In 2008, I believe, I was promoted to the
25 SAIL coordinator.

1 Q. Okay. Give me one minute.

2 A. Sure.

3 Q. So from '03 to '08, and again, these
4 times are approximate, you were MPB, as in "B" as
5 in "boy"?

6 A. Correct.

7 Q. Okay. And what does that stand for?

8 A. Modified post-billing.

9 Q. And explain to me what your -- what your
10 duties would have been in that role.

11 A. It would have been to contact the pick
12 departments within the DC to try to make sure that
13 they had as much of the orders that the stores
14 orders as possible complete, and to produce the
15 paperwork that the drivers use to take out and
16 deliver the routes.

17 Q. The pick department, are those folks that
18 pick the medications off the shelf for the
19 distribution center?

20 A. No. They -- they pick the non-pharmacy.

21 Q. Okay. So let me back up a little bit,
22 and maybe I can help myself get a little bit
23 better understanding.

24 But describe for us what the distribution
25 center at Perrysburg is and what all is housed in

1 it.

2 MS. SWIFT: Objection to form.

3 A. So the distribution center has most of
4 the products that the stores sell. It is
5 primarily non-pharmacy items, and with a little
6 bit of pseudoephedrine items that are housed in
7 the vault, or the cage, that's locked up. And
8 every day we have approximately 150 to 200 stores
9 that we service and fill the orders for.

10 Q. Okay. So if I say the front end of the
11 store, do you know what -- do you know what I'd be
12 referring to?

13 A. I'm -- non-pharmacy --

14 Q. Okay.

15 A. -- is my understanding.

16 Q. So that would be things like paper
17 towels, toilet paper, that type of stuff?

18 A. Correct.

19 Q. Okay. And the Perrysburg distribution
20 center had -- has a lot of front end items that it
21 stores there?

22 A. That's correct. Yes.

23 Q. Has that always been the case going back
24 to '03?

25 A. Yes.

1 Q. Does the -- and I'm just going to talk --
2 and for the purpose of this question I'm just
3 asking about up until 2013 when Perrysburg stopped
4 distributing controlled substances. But up until
5 2013, did Perrysburg also store pharmacy items?

6 MS. SWIFT: Object to the form.

7 A. I don't recall what dates we began
8 housing the pharmacy items. We had regular
9 pharmacy items when I started working there. I
10 don't recall the date that we stopped servicing
11 those, and I don't recall the date that we started
12 or stopped servicing any of the Class II, III, IV
13 or V drugs.

14 Q. When you say regular pharmacy items, what
15 do you mean by that?

16 A. Non-controlled.

17 Q. Blood pressure medication?

18 A. I don't know what items specifically are
19 prescription required.

20 Q. Okay. But that's what you mean when you
21 say -- regular pharmacy would be prescription --

22 A. Yes.

23 Q. -- drugs that are not controlled
24 substances?

25 A. That's true, yes.

1 Q. Okay. Does Perrysburg currently
2 distribute regular pharmacy items?

3 A. We do not.

4 MS. SWIFT: Object to the form.

5 A. The only thing that we distribute is
6 pseudoephedrine items.

7 Q. Okay. So when you were a PPB clerk from
8 2003 to 2008, you were telling me that your role
9 was to ensure that the pickers were being as
10 complete as possible in filling any orders from
11 any stores?

12 A. I don't know if it matters, but it's an
13 MPB. But, yes, that was one of my roles. That
14 was the main role.

15 Q. Were you -- while in that role from 2003
16 to 2008, did you have any responsibilities or
17 duties for any pharmacy items?

18 A. No.

19 Q. So not even non-controlled substances?

20 A. The only responsibility I would have had
21 is completing the paperwork for the driver. I
22 don't have -- I wouldn't have known what items
23 were or were not on there, because we didn't
24 itemize from my department. So if your question
25 is did I specifically have a responsibility for

1 any kind of pharmacy items, no. There was no
2 specific task for pharmacy items.

3 Q. Okay. Would -- would pharmacy items be
4 included on the order form that you're trying to
5 ensure the pickers fill as complete as possible?

6 A. I don't recall if there were any pharmacy
7 items that we had to inquire about for the
8 paperwork.

9 Q. Between '03 and '08, approximately how
10 many stores was Perrysburg servicing?

11 MS. SWIFT: Object to the form.
12 Foundation.

13 A. I couldn't tell you. I don't know.

14 Q. Okay. What were your other duties in
15 that role?

16 A. In MPB?

17 Q. Yes, ma'am.

18 A. It was what I said. It was making sure
19 that the pick department got as much of the orders
20 picked, and making sure that the paperwork was out
21 for the drivers on time to make their deliveries.

22 Q. Are these Walgreens drivers, or are these
23 third parties?

24 A. It -- we -- it's a third party that
25 operates for Walgreens.

1 Q. Anything else, other than review the
2 orders that are picked to ensure they're as
3 complete as possible and printout the paperwork
4 for the drivers?

5 A. There were detailed work, like, we would
6 create spreadsheets for the shipping department so
7 they know what stores were in a what doors that
8 day, and during what wave of lane. Periods
9 showing the shipping department, you know, the
10 types of non-conveyable items that they were going
11 to get. Simple tools like that.

12 Q. Any duties or responsibilities at all
13 from 2003 to 2008 involving controlled substances?

14 A. Not as an MPB clerk, no.

15 Q. And I think you said in 2008 you became a
16 SAIL coordinator?

17 A. Yes, sir.

18 Q. Are you still a SAIL coordinator today?

19 A. It's part of my function, yeah.

20 Q. And I'm presuming that's an acronym that
21 stands for something?

22 A. Yeah. Store Action Inquiry Line.

23 Q. And have your duties in that role been
24 consistent from 2008 until now, or have they
25 changed over time?

1 A. They've changed.

2 Q. Okay. Starting in 2008, what were those
3 duties?

4 A. Primarily, we check to make sure that all
5 the stores who had an order that day, or should
6 have had an order that day, had an order that day.
7 We would process those orders. We would try to
8 correct any issues that the stores had that they
9 contacted us for.

10 Q. What else?

11 A. That's the primary goal of the SAIL
12 coordinator.

13 Q. How many SAIL coordinators would there be
14 in a distribution center such as Perrysburg?

15 A. For -- one, plus an assistant. So two
16 SAIL team members, the coordinator and the
17 assistant.

18 Q. Okay. And when you started in 2008,
19 who -- were you the assistant, or were you the
20 head SAIL coordinator?

21 A. I was the SAIL coordinator.

22 Q. Who was your assistant?

23 A. Carol Shimmel.

24 Q. Is Carol still the assistant?

25 A. She is.

1 Q. How have those duties changed over time?

2 MS. SWIFT: Object to the form.

3 A. Some of the duties have stayed the same.
4 Like, our goal is still to check the orders every
5 day, and make sure that we've got them and to
6 process them. Some of the things that have
7 changed are just the -- well, probably the biggest
8 change would be that we don't distribute
9 pharmaceuticals anymore, so that's a portion that
10 we don't focus on any longer. That's probably the
11 biggest change that we've had, other than, you
12 know, geography with the stores, and which ones
13 we're servicing.

14 Q. In 2008, when you became the SAIL
15 coordinator for Perrysburg, did you have duties
16 and responsibilities regarding controlled
17 substances?

18 A. I don't recall what dates we were sending
19 out C-III through Vs. I did not have any
20 involvement in the C-II -- the Class II drugs at
21 all. But I don't recall what dates I did have
22 C-III through V orders coming through the DC.

23 Q. Have you ever had any involvement for
24 C-II drugs?

25 A. Not while we were distributing.

1 Q. So not pre-2013?

2 A. No.

3 Q. Who would have had responsibilities for
4 the C-II drugs?

5 A. Deb Bish.

6 Q. And what's her title?

7 A. Deb is now the receiving weekend manager.

8 Q. Is that -- that was a bad question --
9 what was her title when she had responsibility for
10 the C-II drugs that Perrysburg was distributing?

11 MS. SWIFT: Object to form.

12 A. She was a C-II function manager.

13 Q. And is there anybody else? Does she have
14 an assistant, like you do, or a staff that would
15 also have been -- or excuse me -- also would have
16 had responsibilities for C-II drugs?

17 MS. SWIFT: Object to the form.

18 A. Deb had -- there was a SAIL coordinator
19 for C-II that I know, and there was a staff of --
20 there was a staff that would pick the orders while
21 we were distributing. I don't know who they would
22 have been.

23 Q. Okay. So I thought you told me there was
24 only one SAIL coordinator, but there's -- there
25 was a separate SAIL coordinator for C-IIs?

1 A. There is. I have one SAIL coordinator
2 for the DC, myself and my assistant, but C-II had
3 a SAIL coordinator.

4 Q. And who is the C-II sale coordinator?

5 A. To my recollection, she had multiple, and
6 I do not recall all of them. There was John
7 Walsh, Rachel Merzke, and a Chad Roper, that I
8 remember.

9 Q. Tell me Chad's last name one more time.

10 A. Roper.

11 Q. R-O-P-E-R?

12 A. Yes, sir.

13 Q. And Rachel's last name?

14 A. Merzke, M-E-R-K-Z-E -- or M-E-R-Z-K-E,
15 Merzke. Sorry.

16 Q. No problem.

17 And are those three folks that you recall
18 being the C-II SAIL coordinator during the time
19 that you've been there?

20 A. Yes. They -- those three individuals
21 were C-II sale coordinators while I've been at
22 Walgreens.

23 Q. Anybody else?

24 A. There may have been. I don't recall.
25 Those are the only three I recall.

1 Q. Are they still there since Walgreens
2 doesn't do C-IIs anymore?

3 A. I believe that Rachel and John are still
4 there. Chad has left the company a number of
5 years ago.

6 Q. Okay. So as far as who would have had
7 responsibilities for C-IIs, it would have been Deb
8 Bish, who was -- was she the C-II function manager
9 the entire time you've been there?

10 MS. SWIFT: Object to the form.

11 A. She was the C-II function manager during
12 the entire time that we distributed C-IIs, and she
13 also was the C-II function manager when we
14 switched to electronic processing, and after the
15 C-II distribution went to AmerisourceBergen.

16 Q. So there hasn't been anybody else in that
17 role?

18 A. No, there has not.

19 Q. As far as folks that would be on the C-II
20 team, or responsible for C-IIs, we got Deb Bish,
21 you gave me the three names of the SAIL
22 coordinators that were -- I guess they would have
23 worked underneath Deb; is that correct?

24 A. Yes. Deb would have been their manager.

25 Q. Okay. Anybody else in the distribution

1 center, any other positions that would have had
2 C-II responsibilities?

3 MS. SWIFT: Object to the form.

4 A. I don't know.

5 Q. You mentioned there were pickers that
6 worked under -- on C-IIs, correct?

7 A. When we distributed the C-IIs, there were
8 individuals that picked the orders.

9 Q. The folks that picked the C-II orders,
10 did they only pick C-II orders?

11 A. I don't know.

12 Q. Did the same people that picked your
13 front end products while you were an MPB clerk,
14 were they also picking controlled substances?

15 MS. SWIFT: Objection to form.

16 A. No, they were not.

17 Q. Approximately how many folks are picking
18 front end items?

19 MS. SWIFT: Object to the form.

20 A. I have no idea.

21 Q. Approximately how many folks are picking
22 controlled drugs when you were distributing them?

23 MS. SWIFT: Object to the form.

24 A. I don't know that either.

25 Q. Okay. Let me try to learn a little bit

1 more about the distribution center.

2 Is there a position at the distribution
3 center called an administration manager?

4 A. Yes, sir.

5 Q. What is the administration manager? What
6 is their role? Sorry.

7 MS. SWIFT: Object to the form.

8 A. I couldn't tell you all the different
9 functions that she has.

10 Q. Okay. Who is the admin manager?

11 A. Tammy Hensley.

12 Q. And how long has she been in that
13 position?

14 A. Since 2008. Yes.

15 Q. Was there somebody in that role before
16 her?

17 A. There was.

18 Q. Who was that?

19 A. I don't know.

20 Q. And Tammy is still there in that role?

21 A. Yes, she is.

22 Q. What does -- what is your interaction
23 with Tammy? How does what she do relate to you?

24 MS. SWIFT: Object to the form.

25 A. They're really separate. We don't share

1 any kind of duties.

2 Q. Okay. Who do you report to as a SAIL
3 coordinator?

4 A. My direct boss is Rob Hackala. He's an
5 inbound/outbound manager.

6 Q. And is he there in Perrysburg?

7 A. He is.

8 Q. Who does he report to?

9 A. Justin Joseph.

10 Q. Who is Justin?

11 A. He's our distribution center manager.

12 Q. How long has he been in that role?

13 MS. SWIFT: Object to the form.

14 A. I'm not sure.

15 Q. Was there a Rob Varno who was the
16 distribution center manager at one point time in
17 time?

18 A. No.

19 Q. Well, do you know who I'm talking about?

20 A. I don't know who Rob Verner is.

21 Q. Varno.

22 A. Varno? I have heard his name, but he's
23 never worked at the Perrysburg distribution
24 center.

25 Q. Approximately how long has Justin been

1 the distribution center manager?

2 MS. SWIFT: Object to the form.

3 A. I would approximate the last two to three
4 years he's been in that role.

5 Q. Who was there before him?

6 A. Steve Kaneller.

7 Q. And has he left Walgreens?

8 A. He's still with Walgreens.

9 Q. Where is he now?

10 A. At the Waxahachie DC in Texas.

11 Q. What is the computer room at the
12 distribution center?

13 A. The computer room processes our orders
14 that we get every day, and prints the labels for
15 the departments to pick against.

16 Q. Okay. What do you mean when you say they
17 process the orders?

18 A. So they're the ones that take whatever
19 orders we have in the system and process them
20 systematically. I don't know what steps they use
21 to do that.

22 Q. Describe that group, or that team for me.
23 How many people are involved in that?

24 A. They have a manager, Matt Nye, and he has
25 a lead or an assistant -- I'm not sure of his

1 title -- his name is Scott Wedel, and he has a few
2 operators. I don't know how many it is.

3 Q. Is there an asset protection team at the
4 distribution center?

5 A. There is.

6 Q. How many folks are involved in that?

7 A. I don't know.

8 Q. Who's the head of that department?

9 A. Victoria Worm.

10 Q. How long has Victoria been in charge of
11 that?

12 A. Probably for the last two to three years.

13 Q. Who was before her?

14 A. Rick Meyer.

15 Q. For how long?

16 A. I don't know.

17 Q. Who was before Rick?

18 A. I don't recall. Jeremy Willis.

19 Q. Do you remember who was before Jeremy?

20 A. No.

21 Q. And what is -- what is your interaction
22 with loss prevention or asset protection?

23 A. I really don't have much of any
24 interaction with them beyond OSHA safety training
25 that they give us every month to go over with our

1 team members.

2 Q. And -- okay. So how many team members do
3 they have?

4 A. I don't know.

5 Q. Approximately.

6 MS. SWIFT: Object to the form.

7 A. I don't know.

8 Q. Do you have any idea what they do?

9 A. My extent of knowledge for what they do
10 is checking trailers coming in and going out for
11 what they're -- they've got, and taking phone
12 calls from drivers. I don't know what those would
13 pertain to, though.

14 Q. As far as the admin manager, you
15 mentioned Tammy Hensley; does she have any
16 assistants, or SAIL coordinator type folks, or
17 anybody like that that works with her?

18 A. She has a group of team members.
19 Approximately 10.

20 Q. Okay. And what are their titles; do you
21 know?

22 A. I don't know.

23 Q. What are their roles?

24 A. They each have a different function. She
25 has somebody that releases distribution items on a

1 daily basis, somebody that handles item issues in
2 the DC. She has a number of individuals that work
3 damaged product, and broke open cases, items like
4 that.

5 Q. So from 2008 until -- up until 2013, when
6 Walgreens stops distributing controlled
7 substances, you had responsibilities or duties
8 related to Schedule III to V controlled
9 substances; would that be correct?

10 MS. SWIFT: Object to the form.
11 Mischaracterizes testimony.

12 A. I don't know what date we stopped
13 distributing narcotics or C-III through Vs. My
14 extent with C-III through Vs in SAIL would just
15 have been processing the orders that we received.
16 But that was systematic.

17 Q. Okay. When you said you processed the
18 orders, I mean, walk me through that. What are
19 you doing? Are you receiving a printout? Are you
20 getting product off the shelf? Are you checking
21 the totes to see if it's accurate? What exactly
22 are you doing?

23 A. The only thing that we did with C-III
24 through Vs is it would have been running a query
25 to make sure that there were no unusually large

1 orders for any store, and then processing the
2 orders after -- after we did that. But I don't
3 recall ever having any orders that we had to check
4 in on.

5 Q. Okay. So you said that you would look
6 for any excessively large orders. Walk me through
7 that process. How would you know what orders had
8 come in?

9 A. So we have a query, or had a query that
10 would look for any orders over a certain number.
11 I don't remember what number it was set at. And
12 if anything showed up on that, we had another
13 query that we would run to check that order
14 against the store's order history. And if it was
15 in line with what they usually get, we would --
16 that would be an indication it was a good order.

17 Q. Okay. So are you doing this on a
18 computer? Are you getting a printout? Walk me
19 through that.

20 A. It was a query that we ran on the
21 computer, but we also did a printout of those
22 every day.

23 Q. Okay. And what would you get on the
24 printout, just any order that was flagged by this
25 query?

1 A. That's correct.

2 Q. And is this something that was -- that
3 you were in charge of, or the pickers were in
4 charge of, or who -- who was running this process?

5 A. The SAIL department would run the query.

6 Q. Did that same query get run for front end
7 products?

8 A. Yes, it did.

9 Q. So that same query about looking for
10 excessive orders would be run for paper towels?

11 A. Yes.

12 Q. It would be run for toilet paper?

13 A. Any item that was over that threshold.

14 Q. It would be run for bubble gum?

15 A. Yes.

16 Q. And any item that was over that
17 threshold, you would get a printout of that
18 excessive order?

19 A. That's correct.

20 Q. Whether it was for Skittles, or
21 over-the-counter cold medication, or hydrocodone
22 products, which were Schedule III?

23 A. The front end query would only bring up
24 items that were non-pharmacy.

25 Q. But the same query that you ran for these

1 Schedule III to V drugs was also run for the front
2 end products?

3 A. It was a query that was geared to look at
4 any pharmacy items. There were two separate
5 queries. So now, currently, we use a query that
6 looks for any non-pharmacy. It's the same query
7 that we used to use then. When we did distribute
8 C-III through Vs, we had a separate query that
9 just looked at C-III through Vs for any.

10 Q. And it was looking at -- I've seen an
11 acronym S-K-U-S, SKUs?

12 A. SKUs.

13 Q. Do you know what I'm talking about?

14 A. Yeah. I don't know what the acronym
15 means, but it means individual items.

16 Q. Okay. I looked it up, and I think it's
17 store keeping units, but --

18 A. It could be.

19 Q. Okay. So if we're talking about -- if
20 we're talking about paper towels, it would be an
21 individually wrapped unit of paper towels?

22 A. It would be however the store sells the
23 unit is a unit. So if the store sells a six-pack
24 of Bounty, that's one unit.

25 Q. Okay. Gotcha. Whatever is wrapped in an

1 individual package?

2 A. Correct.

3 Q. Okay. And if a store sells a 500-count
4 bottle of Vicodin, that's a Schedule III drug,
5 that would be one SKU?

6 A. I don't know what the quantity of those
7 were. But if the bottle was 500 pills, and they
8 only ordered one bottle, they would get one bottle
9 of 500 pills.

10 Q. And that would be one SKU?

11 A. Yes. That is true.

12 Q. What was the number of SKUs for Schedule
13 III to V drugs that would trigger it to pop on
14 that report?

15 A. I don't recall.

16 Q. Was there anything else that you did
17 related to Schedule III to V controlled substances
18 from '08 through whenever Walgreens stopped
19 distributing?

20 MS. SWIFT: Object to the form.

21 A. Not that I remember.

22 Q. Did you actually go and pick the Schedule
23 III to V drugs off the shelves of the distribution
24 center?

25 A. No.

1 Q. Did you put them in the totes?

2 A. No.

3 Q. Did you check the totes before they
4 got -- went on the truck?

5 A. No.

6 Q. Did you put the totes on the truck?

7 A. I had no handling of any controlled
8 substances at any time in the DC.

9 Q. How often would you process these
10 Schedule III to V orders? Was that a -- was that
11 a daily occurrence?

12 A. We processed them daily while we were
13 distributing them.

14 Q. From 2008, when you became a SAIL
15 coordinator, up until Walgreens stopped
16 distributing controlled substances, did you ever
17 have any duties or responsibilities related to
18 C-IIIs?

19 A. I did not.

20 Q. Did you ever run any excessive order
21 queries, or anything like that for C-IIIs?

22 A. I did not.

23 Q. Do you know whether or not anybody in the
24 distribution center did?

25 A. I don't have any knowledge of it, no.

1 Q. Do you know anything that was done within
2 the distribution center related to the processing
3 of C-II orders?

4 A. I don't have that knowledge, no.

5 Q. I'll show you what I'll mark as Exhibit
6 Number 1. This is P-WAG-2596.

7 - - - - -

8 (Thereupon, Deposition Exhibit
9 Walgreens-Diebert 1, E-mail Chain,
10 P-WAG-02596, was marked for purposes
11 of identification.)

12 - - - - -

13 Q. And do you see this is an e-mail chain,
14 and it looks like at the very top it's an e-mail
15 from Tammy Hensley?

16 A. I see that Tammy sent the e-mail.

17 Q. Okay. And Tammy, I think you told us
18 that she was the admin manager at the Perrysburg
19 distribution center?

20 A. Yes, she is.

21 Q. And it looks like this is an e-mail that
22 she sent on August 10, 2015, and it went to Wayne
23 Groves, who is a diversion investigator at the
24 DEA. Do you see that that's who the e-mail went
25 to?

1 A. I see that, yes.

2 Q. Okay. And the subject is "DEA chemical
3 application more information." And if you look
4 below in the body, it says, "hello, Wayne. I
5 reviewed the e-mail and attachments below. You
6 will see that the blue font attachments were sent
7 to you previously. I'll resend that e-mail right
8 after sending this one you are reading." Do you
9 see that?

10 A. I see where it says that.

11 Q. Okay. And if you flip to the second
12 page, it looks like there's -- and, sorry, go back
13 to the first page with me, and go down to the
14 e-mail at the bottom of the page. And you see
15 Tammy responds there, and she says, "the blue
16 responses below I've previously sent you. The new
17 information I've put in green font." Do you see
18 that?

19 A. I see that.

20 Q. Okay. And then if we go to the previous
21 e-mail, we'll see some of the information that
22 Tammy actually added to the previous e-mail.

23 MS. SWIFT: Object to the form.

24 Q. Okay?

25 A. I can't tell based on this what was new

1 information or what was old information.

2 Q. Okay. No, I understand. It's not in
3 color.

4 Do you see at the top of the page, it's
5 got the date that we have this e-mail from
6 Mr. Groves of May 15, 2015?

7 A. Yes. I see that.

8 Q. It says, "Rick, thank you for all the
9 information that you have forwarded regarding our
10 visit to your facility. I have questions that I
11 need to have answered regarding Walgreens List 1
12 chemical application. If you can forward me the
13 information through e-mail or regular mail, it
14 would be appreciated. Call me if you have any
15 questions." Do you see that?

16 A. I see that.

17 Q. Okay. Then down -- then there's a big
18 bolded heading that says "background information."
19 Do you see that?

20 A. Yes, I do.

21 Q. Okay. And under there it says, "names,
22 titles, responsibilities of persons contacted and
23 date." Do you see that?

24 A. Yes.

25 Q. Okay. And then it looks like there was

1 some information entered in here about some of the
2 folks who worked at the Perrysburg distribution
3 center. Do you see that?

4 A. I do.

5 Q. And first it has Rick Meyer as asset
6 protection manager, and that was one of the
7 individuals you told us who filled that role,
8 correct?

9 A. That's correct.

10 Q. Okay. Is this fairly consistent with
11 your memory that Rick was in that position in
12 approximately August 2015?

13 A. Yes.

14 Q. Okay. And then it has you listed,
15 correct?

16 A. It does.

17 Q. And it says that your position is
18 "SAIL/C2 supervisor." Do you see that?

19 A. Yes.

20 Q. Is that accurate?

21 A. That was accurate at the time.

22 Q. Okay. I could have swore you just told
23 me that you've never had any responsibilities or
24 duties at all for C-IIs. What is -- what does
25 this mean?

1 A. Well, this is in 2015, which was later,
2 and I did become the C2 supervisor at that time
3 supervising the team members that sign the
4 electronic orders. We were not distributing any
5 C-IIIs at that time.

6 Q. Okay. That makes perfect sense. So when
7 did you become the C2 supervisor?

8 A. In late 2014.

9 Q. Okay. And let's talk about that for a
10 minute. What is your -- what are your duties and
11 responsibilities in that role as the C2
12 supervisor?

13 A. So it's similar to regular SAIL duties.
14 We make sure that we've got all the orders -- our
15 computer room actually does that. My role
16 primarily is to make sure that the signers are
17 available, and they're to sign the number of
18 orders that we get every night, and that we print
19 any paper 222 orders that we have for sorts that
20 are not electronic.

21 Q. Okay. So the first thing I heard you to
22 say is to make sure that there are signers
23 available?

24 A. Yes.

25 Q. Explain to me what that means.

1 A. So most of our stores are electronic
2 ordering, and we will get a number of orders every
3 night, and we have to have a number of team
4 members available to sign the volume of orders
5 that we have.

6 Q. Sign for what? I don't -- what are they
7 signing?

8 A. They're signing the electronic 222s that
9 the stores are processed against -- the orders are
10 processed against.

11 Q. Okay. So somebody from the distribution
12 center has to sign the forms in order for the
13 order to go through?

14 A. Electronically, yes.

15 Q. And once that happens, where do those
16 orders go?

17 A. Systematically, it goes through EDI to --
18 I'm sorry -- actually, to ABC to get filled the
19 next -- overnight, and then the next morning they
20 make the deliveries to the stores.

21 Q. Okay. So the orders go from the stores
22 to the distribution center where -- where you are,
23 correct?

24 A. That's correct.

25 Q. And from the distribution center they go

1 electronically to AmerisourceBergen?

2 A. That's correct.

3 Q. And from there, AmerisourceBergen is
4 charged with filling the orders?

5 A. Yes.

6 MS. SCHUCHARDT: Object to the form.

7 Q. Okay. So what is your process as the C2
8 supervisor starting in 2014, late 2014, when an
9 order for C-IIs comes in from the store?

10 A. I didn't -- the computer room at
11 Perrysburg is the department that actually checks
12 to see that we got all the orders and processes
13 them. My duty is primarily to make sure that the
14 orders that we got, there are processed, are
15 signed, and forwarded to ABC.

16 Q. Okay. Do you do any evaluation of any of
17 the orders that come in?

18 A. I do not.

19 Q. Do you do any analysis of any of the
20 orders that come in?

21 A. I do not.

22 Q. Do you do any type of excessive query
23 report, like you told us about, that you did at
24 one point in time with the III through Vs?

25 A. I do not.

1 Q. Does the computer room do any type of
2 analysis of the orders that come in for C-IIs?

3 MS. SWIFT: Object to the form.

4 A. I -- I don't know what steps or process
5 they follow to process the orders.

6 Q. Do you know whether or not they do any
7 analysis of any of the orders that come in?

8 A. I don't know what their process is.

9 Q. So, no, you don't know whether or not
10 they do any analysis?

11 MS. SWIFT: Object to the form.

12 A. I don't know if they run that query like
13 we used to, and I don't know what steps they
14 follow to process the orders.

15 Q. Do you ever -- are there ever occasions
16 where you have orders come in and the computer
17 room tells you we're not going to fill this order,
18 we're not going to fill that order, or anything
19 like that?

20 A. That would be ABC's responsibility to
21 fill orders.

22 Q. Okay. Is there ever a situation where
23 the computer room tells you you don't need to
24 worry about getting this order signed because
25 we're not going to send it to ABC?

1 A. No.

2 Q. Does the computer room ever tell you that
3 they're blocking orders, or anything of that
4 nature?

5 A. The computer room, to my knowledge,
6 simply checks to make sure we got the orders and
7 processes the orders that we get.

8 Q. How many people are authorized to sign
9 the 222s?

10 MS. SWIFT: Object to the form.

11 A. There are two types of 222s, so we have
12 paper 222s and electronic 222s. We have five
13 regular signers that sign orders every night right
14 now, and then we have myself and Carol Shimmel,
15 the SAIL assistant, who also have certification to
16 do that.

17 Q. When you say "sign," due mean physically?

18 A. Electronic.

19 Q. Okay. What's the process of completing
20 electronic signatures?

21 A. Every team member who has authorization
22 to sign who's had a background approval from the
23 DEA has a specific and unique cert for every
24 single store. And we have a password for our cert
25 that we are the only ones that know that password.

1 So depending on what store the signer is signing,
2 they'll have to put their unique password in there
3 to approve the order and send it to ABC.

4 Q. How long is the process to sign a single
5 order?

6 A. Seconds.

7 Q. How many orders are -- on average, are --
8 is the distribution center processing every night
9 for C-IIs?

10 MS. SWIFT: Object to the form.

11 A. I would say on average we probably
12 process around 4,000 -- sign around 4,000
13 electronic orders a night. That is an estimate.

14 Q. About how many stores do you process C-II
15 orders for?

16 A. So right now we have almost 8,000 stores
17 who are on electronic signing, and every store is
18 able to order every day if they have items that
19 they need. So it is possible to have up to 8,000
20 orders a day, but we average around 4,000.

21 Q. All orders for C-IIs come through the
22 Perrysburg distribution center?

23 A. They do.

24 Q. So 8,000 stores, you process around 4,000
25 C-II orders a day; is that fair?

1 A. That's fair.

2 Q. And the process for signing off on those
3 orders is limited to signing the orders; is that
4 fair?

5 A. The process for signing the orders is
6 signing the orders.

7 Q. Right.

8 A. Yes.

9 Q. Okay. No, that -- it seems -- I know it
10 seems like a silly question, but there's --
11 there's nothing that goes into it before you sign
12 the order --

13 A. There's not --

14 MS. SWIFT: Object to the form.

15 Q. -- there's no -- no analysis, no
16 investigation, no -- nothing like that?

17 MS. SWIFT: Object to the form.

18 A. I don't know what process the computer
19 room goes through before processing the orders. I
20 don't know what steps they take --

21 UNIDENTIFIED SPEAKER: This is the court
22 reporter in the deposition of Christine Bader in
23 the opiate litigation. If you have not already
24 sent your appearance to Golkow, can you please
25 send your appearance to preihl@golkow.com. And

1 that is spelled P as in Paul; R as in Robert; E as
2 in Edward; I as in ice cream; H as in Harry, L as
3 in Larry.

4 MS. SWIFT: You want to take this one?

5 MR. GADDY: You're on a conference line
6 for a different deposition.

7 UNIDENTIFIED SPEAKER: Okay. Thank you
8 very much for speaking up.

9 MR. BULLERMAN: While we're at a break
10 here in the questioning because of that
11 interruption; is there a problem with the real
12 time? Because I'm not getting it.

13 MS. SCHUCHARDT: I'm not getting it
14 either.

15 MS. SWIFT: Thank you.

16 THE COURT REPORTER: It's showing on my
17 end, this is the court reporter, that I am sending
18 it out, so I'm not sure what the problem is.

19 MR. BULLERMAN: So I will need that
20 fixed. So can you contact Golkow and get that
21 fixed, or what?

22 MS. GADDY: Yeah, let's go off the
23 record.

24 THE VIDEOGRAPHER: Going off the record
25 at 8:58 a.m.

1 (Recess had.)

2 THE VIDEOGRAPHER: We're back on the
3 record at 9:25 a.m.

4 Q. Okay, Ms. Diebert. We were talking about
5 your role as the C2 supervisor, or C2 manager that
6 you assumed in late 2014. Do you recall that,
7 generally?

8 A. Yes, I do. Yes.

9 Q. And you said the primary function that
10 you serve in that role is to ensure that orders
11 that come in from the 8,000 stores on a daily
12 basis get signed off on by you and the other folks
13 who have the ability to sign; is that correct?

14 MS. SWIFT: Object to the form. Object
15 to the form

16 A. We get approximately 4,000 orders, and my
17 goal is to -- my role is to make sure that I have
18 signers available to make sure the orders are all
19 signed.

20 Q. Okay. And one of the last things I did
21 was ask what sounded like a silly question when I
22 said is there anything to the process of signing
23 the orders other than signing them, and what I
24 meant by that is; is there any -- any review,
25 analysis, or evaluation that's done by you or any

1 of the other signers prior to them signing the
2 orders?

3 MS. SWIFT: Object to the form.

4 A. The signers and I only sign the orders
5 that are processed. Our computer room are the
6 ones that check for orders and do any steps that
7 goes along with that. I don't know what those
8 steps are, though.

9 Q. Do you have any idea what the computer
10 room folks do --

11 MS. SWIFT: Object to the form.

12 Q. -- as far as evaluating orders?

13 MS. SWIFT: Object to the form.

14 A. I don't know what they do in the computer
15 room. I don't have any knowledge of that.

16 Q. As soon as an order gets to you, your job
17 is to make sure it gets signed?

18 A. That is correct. That --

19 Q. Do you do any analysis of ceilings or
20 thresholds as it relates to the controlled
21 substance orders?

22 MS. SWIFT: Object to the form.

23 A. That's not something that my department
24 does.

25 Q. When I use the term ceiling and

1 thresholds, do those mean anything to you as far
2 as evaluating orders of controlled substances?

3 A. I've heard those terms. But as far as I
4 know, they're handled from our corporate office.
5 It's not something that we do at the DC.

6 Q. Okay. You've never received any training
7 or education on ceilings or thresholds, or how
8 they may or may not be applied to controlled
9 substance orders?

10 MS. SWIFT: Object to the form.

11 A. I -- I have not received any training.

12 Q. Okay. Now, I think I understood you
13 earlier this morning to tell me that you had never
14 received any training or education from Walgreens
15 on any rules or regulations regarding any
16 controlled substances; would that be fair?

17 MS. SWIFT: Object to the extent it
18 mischaracterizes the testimony.

19 A. I don't personally remember having ever
20 received training specifically to orders for
21 controls when we distributed them.

22 Q. I'll show you what I'll mark as Exhibit
23 Number 2. This is P-GEN-0010.

24 - - - - -

25 (Thereupon, Deposition Exhibit

1 Walgreens-Diebert 2, DEA Website
2 Printout P-GEN-0010, was marked for
3 purposes of identification.)

4 - - - - -.

5 Q. I'll mark it as number 2, and I'll
6 represent to you this is a printout from the DEA
7 website, and it has a -- as you see, kind of a
8 third of the way down the page, or a quarter of
9 the way down the page, it's a little bit faded,
10 but it says "Title 21, Code of Federal
11 Regulations," about a quarter of the way down
12 starting at the top. Ms. Diebert, I think -- I
13 think on this screen right here, maybe?

14 A. It may be easier to see?

15 Q. Yeah, he'll be pulling it up, and you
16 kind of -- you can look, obviously, at your
17 document as well. But just -- just to help you
18 find your place, sometimes it's helpful.

19 A. Okay.

20 Q. And so are you with me now where it says
21 "Title 21, Code of Federal Regulations"?

22 A. Yes. I see that.

23 Q. And below that it says, "Part 1301,
24 Registration of Manufacturers, Distributors and
25 Dispensers of Controlled Substances." Do you see

1 that?

2 A. I see that.

3 Q. And you agree with me that from at least
4 2008, when -- when you became the SAIL
5 coordinator, up until the time when Walgreens
6 stopped distributing, that Walgreens was a
7 distributor of controlled substances?

8 MS. SWIFT: Object to the form.
9 Foundation.

10 A. So we did distribute C-III through Vs and
11 C-IIs while I was in the SAIL coordinator
12 capacity. I don't recall what dates we started or
13 stopped either one.

14 Q. You were definitely distributing C-IIs
15 and C-III through Vs in 2008 when you became the
16 SAIL coordinator, correct?

17 A. I don't recall. I don't recall what day
18 we started or stopped that.

19 Q. Do you recall there ever being a period
20 of time when you were the SAIL coordinator where
21 you had to be -- there was any type of
22 announcement that you were going to start having
23 controlled substances be a part of your duty, or
24 was that something that was a part of your duty
25 when you assumed the position?

1 A. So C-III through Vs were a part of my
2 duty when I assumed the SAIL coordinator position
3 in 2008. I was never in a position of the C-II
4 narcotic distribution.

5 Q. Okay. Is there some distinction in your
6 mind that -- for any differences between C-II and
7 C-III through Vs? I mean, what distinction are
8 you making there?

9 MS. SWIFT: Object to the form. Vague.

10 A. It's just a different class of controlled
11 substances.

12 Q. Okay. Do you have any understanding or
13 appreciation that there's different duties or
14 rules or requirements regarding the two?

15 MS. SWIFT: Object to the form.

16 A. I don't -- I don't know what the duties
17 are for the two, or -- I couldn't compare them to
18 know if there is a difference.

19 Q. Okay. Okay. So if we look at this
20 particular regulation, below what we just read it
21 says "security requirements." Do you see that?

22 A. Yes, I do.

23 Q. And the specific section that we're going
24 to look at is Section 1301.74. It's other
25 security controls for non-practitioners. Do you

1 see that?

2 A. I do see that.

3 Q. And what I'm going to draw your attention
4 to is paragraph B. Do you see that?

5 A. I do.

6 Q. Okay. Do you recall whether or not
7 you've ever seen this regulation before?

8 A. I do not recall seeing this before, no.

9 Q. And if you'll read along with me in
10 paragraph B, it says, "the registrant," and in
11 this case that would be -- that would be
12 Walgreens, "shall design and operate a system to
13 disclose to the registrant suspicious orders of
14 controlled substances." Do you see that sentence?

15 A. I do see that.

16 Q. Okay. Are you familiar with that phrase,
17 "suspicious orders"?

18 A. I'm familiar with the phrase. I've heard
19 it. But I've never had any capacity for it in my
20 role.

21 Q. Okay. Have you ever been provided any
22 training or education on suspicious orders, or
23 what that means in the context of this regulation?

24 A. I've never -- I don't recall ever
25 receiving any training on suspicious orders in any

1 capacity.

2 Q. So it says, "the registrant shall design
3 and operate a system to disclose to the registrant
4 suspicious orders of controlled substances. The
5 registrant shall inform the Field Division Office
6 of the administration in his area of suspicious
7 orders when discovered by the registrant." Do you
8 see that?

9 A. I see that it says that.

10 Q. And it continues to say, "suspicious
11 orders include orders of unusual size, orders
12 deviating substantially from a normal pattern, and
13 orders of unusual frequency." Do you see that?

14 A. I see that.

15 Q. Do you see anywhere in this regulation
16 where there's a distinction made between Schedule
17 II controlled substances and Schedules III through
18 V controlled substances?

19 A. I do not see in this paragraph where it
20 makes any distinction.

21 Q. Okay. It simply uses the word
22 "controlled substances," correct?

23 A. That is correct.

24 Q. Okay. And Schedule III drugs are
25 controlled substances, right?

1 A. That is correct.

2 Q. Now that we've read the paragraph B
3 there, does that refresh your memory, and do you
4 recall receiving any training or education from
5 Walgreens regarding suspicious orders?

6 A. I do not recall ever receiving any
7 training on suspicious orders at Walgreens.

8 Q. Okay. Do you recall ever having as a
9 part of your responsibility or duties the
10 identification of suspicious orders?

11 MS. SWIFT: Object to the form.

12 A. That was not part of any of my
13 responsibilities.

14 Q. Paragraph -- the second sentence talks
15 about notifying the Field Division Office of DEA
16 about suspicious orders; do you see that?

17 A. I see where it says the registrant shall
18 inform the field office.

19 Q. Was any part of your duties or
20 responsibilities at Walgreens ever involve the
21 notification of DEA regarding suspicious orders?

22 A. I -- my particular function did not have
23 anything to do with suspicious orders.

24 Q. Do you know if anybody at the
25 distribution center had roles or responsibilities

1 related to suspicious orders?

2 MS. SWIFT: Object to the form. Vague,
3 and foundation.

4 A. I don't know.

5 Q. You said that you had heard that term
6 before, "suspicious orders," correct?

7 A. I have heard the term.

8 Q. In what context?

9 A. Just that there are suspicious orders.

10 Q. Can you tell me more about that?

11 A. No. I just heard the term talked about
12 before, that the DEA is looking for, you know, any
13 suspicious order report. But I've never had
14 anything to do with it personally.

15 Q. Who would have had something to do with
16 it?

17 MS. SWIFT: Object to the form.
18 Foundation.

19 A. I don't know.

20 Q. Do you know if anybody has anything to do
21 with it at the distribution center?

22 MS. SWIFT: Object to the form.
23 Foundation.

24 A. I don't know.

25 Q. What is a suspicious controlled drug

1 order report?

2 MS. SWIFT: Object to the form.

3 Foundation.

4 A. I don't know.

5 Q. Are you aware that for a period of time
6 suspicious controlled drug order reports were
7 being sent to the Walgreens distribution centers?

8 A. I was not aware of that.

9 Q. I'll show you what I'll mark as Exhibit
10 Number 3. This is P-WAG-0011.

11 - - - - -

12 (Thereupon, Deposition Exhibit
13 Walgreens-Diebert 3, E-mail and
14 attachment P-WAG-0011, was marked
15 for purposes of identification.)

16 - - - - -

17 Q. And do you see the front page of this
18 document is an e-mail, and then we're going to
19 spend most of our time looking at the attachment
20 to that e-mail. Do you see this looks like it's
21 an e-mail from Eric Stahmann to Eric Stahmann; do
22 you see that?

23 A. I do see that.

24 Q. Do you know who Mr. Stahmann is?

25 A. I have not heard his name before.

1 Q. Okay. And the subject is "CD orders-2,"
2 and then it has an attachment listed there,
3 correct?

4 A. Yes.

5 Q. Okay. And if you would turn with me,
6 please, to -- if you look in the bottom right-hand
7 corner, there's a Bates numbering system?

8 A. Yes, sir.

9 Q. If you would turn with me to the Bates
10 numbering that ends 441. Are you with me?

11 A. I am.

12 Q. Okay. And if you go about --

13 MR. GADDY: 441.

14 Q. If you go with me about three-quarters of
15 the way down the page, in the center of the page
16 you'll see an entry that says page 11655?

17 A. Okay. I see that.

18 Q. Are you with me?

19 A. Yes.

20 Q. And the formatting of this is kind of
21 funky as far as how it prints out on here, so you
22 got pages that start in the middle of the page and
23 things like that. But I think it -- I think we
24 can make some sense of it if we go through it.

25 First, let me ask you, as you just kind

1 of flip through here, is this a report you've ever
2 seen before?

3 A. No. This doesn't look familiar to me at
4 all.

5 Q. You don't recall anybody at the
6 distribution center ever showing you anything like
7 this?

8 A. I never saw a report like this that I can
9 remember.

10 Q. And if we look just under the -- about
11 three-quarters of the way down the page it says
12 page 11655. Are you with me?

13 A. I am.

14 Q. And just below that to the left it
15 says -- it has a date, correct?

16 A. Yes.

17 Q. And the date is 8/2/2010?

18 A. That's correct.

19 Q. And then over to the right it has I guess
20 the title or the heading, and it says "suspicious
21 controlled drug orders for month of July 2010."
22 Do you see that?

23 A. I see that.

24 Q. And right below there it says "management
25 report." Do you see that?

1 A. I do.

2 Q. And then it has a sales district of 277.

3 Do you see that?

4 A. I do.

5 Q. Does that mean anything to you?

6 A. No. The sales district would be the area
7 for the store or group of stores that this report
8 would be based on.

9 Q. Okay. And this particular store, it's
10 got a store number there 12444, a DEA number for
11 that store, and then it's got an address in
12 Cleveland, Ohio. Do you see that?

13 A. I see that.

14 Q. And is Cleveland, Ohio an area that
15 Walgreens distributed controlled substances to
16 during the period of time that it was so
17 distributing?

18 MS. SWIFT: Object to the form.
19 Foundation.

20 A. Cleveland, Ohio is in the area that the
21 distribution center services and delivers product
22 to. I don't know if we were delivering any
23 controlled substances during that time.

24 Q. Okay. Well, the other two distribution
25 centers that Walgreens had that did controlled

1 substances was Jupiter, Florida and Woodlands,
2 California, right?

3 A. Jupiter and Woodland also distributed
4 C-II narcotics. But I don't know, again, what
5 times or dates that they did theirs.

6 Q. And those were the only other two that
7 distributed C-II narcotics, correct?

8 A. To my knowledge, there were only the
9 three DCs that have ever distributed C-II
10 narcotics to the stores.

11 Q. And it's consistent with your
12 understanding that the Perrysburg, Ohio
13 distribution center was the distribution center
14 that would have distributed C-II or C-III
15 narcotics to the Cleveland, Ohio area; is that
16 fair?

17 MS. SWIFT: Object to the form.
18 Foundation.

19 A. We would have distributed to the
20 Cleveland, Ohio store while Perrysburg DC was
21 doing the distributions.

22 Q. Of controlled substances?

23 A. Of C-IIs. Not during that -- not during
24 outside that time, though. It would have been a
25 different distribution center that did that.

1 Q. Okay. I understand. Okay.

2 And so then below -- below the address
3 for the store you see there's two horizontal
4 lines?

5 A. Yes, sir.

6 Q. And then below there, there's a --
7 something that says "description," and a colon; do
8 you see that?

9 A. I do.

10 Q. On the -- then below there, it looks like
11 it's got a couple things. First, on the left it's
12 got an NDC number; do you see that?

13 A. Yes, I do.

14 Q. What's an NDC number?

15 A. An NDC is the item code for that item.
16 It's a unique code for that item.

17 Q. Okay. And so we see there an NDC number,
18 and then it looks like to the right there's a
19 description for that item, correct?

20 A. That's correct.

21 Q. And what's the description for that
22 particular item?

23 A. For this particular item, it says the
24 description is hydrocodone A pack 10-660 tabs.

25 Q. Okay. Do you know what that is?

1 A. Just that it's the item description.
2 Hydrocodone.

3 Q. Okay. And this was a Schedule III drug?
4 MS. SWIFT: Object to the form.

5 A. I -- I don't know what classification it
6 would have had at the time.

7 Q. Can you tell me some of the Schedule III
8 drugs that you were in charge of as the SAIL
9 coordinator from '08 through the time that
10 Walgreens stop distributing?

11 A. I don't know what the specific drugs
12 were, no.

13 Q. Do you know whether or not Vicodin was
14 one of the drugs that was in your purview as the
15 SAIL coordinator in charge of C-IIIs?

16 A. I don't know.

17 Q. Do you know whether or not Lortab was a
18 drug that was within your purview as the SAIL
19 coordinator in charge of C-IIIs?

20 A. I don't know.

21 Q. Do you know whether or not Norco was a
22 Schedule III drug that you were in charge of
23 during your purview as the SAIL coordinator in
24 charge of C-IIIs?

25 A. I don't know.

1 Q. Do you know any Schedule III drugs by
2 name that you were in charge of while you were the
3 SAIL coordinator?

4 A. I don't know what the individual drug
5 names were.

6 Q. Did you receive any training or education
7 from Walgreens on the potency or abusiveness, or
8 the potential for abuse of any of the C-III to V
9 drugs?

10 A. As a person that just processes the
11 orders, that's not something that I recall ever
12 receiving training for.

13 Q. So as you sit here and see an order for a
14 hydrocodone product on this suspicious control
15 order report, you have no idea whether that's one
16 of your products or not?

17 A. I don't know if that was one of the
18 products that we were distributing at the time.

19 Q. Okay. Just above where it lists the
20 hydrocodone product, it has a formula that says
21 "average order times DEA factor equals trigger."
22 Do you see that?

23 A. I see that.

24 Q. Have you ever seen that before?

25 A. I have not.

1 Q. Does that mean anything to you?

2 A. No.

3 Q. Do you know what an average order is, or
4 how that would have been calculated?

5 A. I do not.

6 Q. Do you know what a DEA factor is, or how
7 that would have been calculated?

8 A. I have not heard that term before.

9 Q. And if you flip the page, do you see that
10 about the top half of the page it gives -- it's
11 got somewhat of a rudimentarily chart for the
12 columns or date ordered, quantity, and then DC
13 over on the right?

14 A. I see that.

15 Q. And the DC for each of these orders is
16 listed as 011?

17 A. I do see that.

18 Q. Do you know what that means?

19 A. That is the Perrysburg distribution
20 center.

21 Q. Okay. So this chart seems to be
22 indicating that the Perrysburg distribution center
23 would have been the source of these orders?

24 MS. SWIFT: Object to the form.
25 Foundation.

1 A. According to this chart, that's what it
2 says.

3 Q. Okay. And the chart then -- it reads
4 bottom up, as far as chronology, and do you see
5 how the bottom entry there on that chart is an
6 order from June 2, 2010?

7 A. I see that.

8 Q. And it indicates that on that date there
9 were three units?

10 A. I -- it says that, yes.

11 Q. And if -- and if we look back at the
12 previous page, a unit would have been that plus
13 100 at the end of the description. Does that mean
14 100-count bottle?

15 A. Yes.

16 Q. So there's -- so those three units on
17 June 2, 2010 would have been three 100-count
18 bottles; is that correct?

19 MS. SWIFT: Object to the form.
20 Foundation.

21 A. That's -- that's my understanding.

22 Q. And if we go up, it looks like two days
23 later on the 4th there was an order for two
24 additional 100-count bottles, correct?

25 MS. SWIFT: Object to the form.

1 A. That's what it lists.

2 Q. Okay. And we won't go through every one,
3 but you see as it goes through the month of June
4 there were -- there were additional orders for
5 additional 100-count bottles of hydrocodone
6 product?

7 MS. SWIFT: Object to the form.

8 Q. Do you see that?

9 A. I do see that.

10 Q. And then just below the June 2nd order,
11 do you see where it totals up the entire number of
12 orders?

13 A. I do.

14 Q. And it lists the total orders there as
15 ■; do you see that?

16 A. I see that.

17 Q. And then it gives a percentage, ■
18 percent; do you see that?

19 A. I see the percentage.

20 Q. Okay. And do you know what that's
21 indicating?

22 A. I do not.

23 Q. If we go back to the previous page, do
24 you see that it has the trigger amount as ■?

25 A. I see that.

1 Q. And then if we go back to the total
2 amount, the total actually ordered was ■■■; do you
3 see that?

4 A. I see that.

5 Q. And do you -- do you recognize -- and I'm
6 not asking you to do math -- but that generally
7 that ■■■ represents that the amount that the ■■■ is
8 over the ■■■?

9 MS. SWIFT: Object to the form.
10 Foundation.

11 A. I imagine that is the percentage.

12 Q. Okay. Do you ever recall during your
13 time as a SAIL coordinator who was in charge of
14 Schedule III controlled substances anybody coming
15 to you and giving you information about orders
16 from stores that were exceeding DEA trigger
17 amounts?

18 MS. SWIFT: Object to the form.

19 A. I -- I don't recall ever having that
20 happen.

21 Q. Do you ever recall anybody telling you
22 about -- coming to you with -- indicating that
23 reports were showing excess amounts of controlled
24 substances going to stores?

25 MS. SWIFT: Object to the form.

1 A. No. I don't recall that at all.

2 Q. Now, if we go back to the previous page,
3 do you see -- we looked at this a moment ago, but
4 do you see the date of this particular report is
5 August 2, 2010?

6 A. I see that.

7 Q. Okay. And if we go back to -- if we flip
8 the page and look at these orders that we were
9 looking at, these are all orders from June 2010;
10 do you see that?

11 A. I see that.

12 Q. Okay. At any point in time would --
13 would it be the practice of Walgreens within the
14 distribution center, and specifically as it
15 relates to the Schedule III controlled substances,
16 to hold orders for weeks or months at a time?

17 MS. SWIFT: Object to the form.
18 Foundation.

19 A. From a distribution -- from my position
20 at the distribution center, we would not hold
21 anything. Whatever orders came through to process
22 were processed.

23 Q. You were never asked to evaluate any --
24 whether or not orders exceeded any thresholds or
25 any DEA limits or any trigger amounts, or anything

1 like that?

2 MS. SWIFT: Object to the form.

3 Compound. Vague.

4 A. My position only processed the orders
5 that we received. If there was another department
6 that may have done that, I don't know who it would
7 have been, or what steps they would have taken to
8 do that. But my department and what I did did not
9 have that as part of our process.

10 Q. I'll show you what I'll mark as Exhibit
11 Number 4. This is P-WAG-2670.

12 - - - - -

13 (Thereupon, Deposition Exhibit
14 Walgreens-Diebert 4, Personnel File
15 P-WAG-02670, was marked for purposes
16 of identification.)

17 - - - - -

18 Q. Do you recognize this as your personnel
19 file and performance reviews?

20 A. Yes, I do.

21 Q. Turn with me, please, to -- it's going to
22 be -- it's going to say 18 of 23. And, actually,
23 you can start at 17 of 23. That makes sense.

24 Now, you've been at the distribution
25 center going all the way back to 2003, correct?

1 A. That is correct.

2 Q. That's been your full-time job all the
3 way back to 2003?

4 A. That's correct.

5 Q. You've worked there for 16 years now?

6 A. That's correct.

7 Q. And -- and here in this -- it looks like
8 these are comments that you inserted yourself?

9 A. Yes. On this page, I inserted that
10 comment.

11 Q. Okay. And you say here, "I absorbed the
12 responsibilities of the C-II SAIL department,
13 including all C-II order processing and DEA 222
14 form management." Do you see that?

15 A. I do.

16 Q. And is that -- is that the process that
17 you were telling us about just a little bit ago as
18 far as getting orders signed?

19 A. That's correct.

20 Q. Okay. And if you turn the page, there's
21 a list of bullet points, and then below -- there's
22 a list of indented bullet points, and then below
23 that there's another bullet point that says "I'm
24 very knowledgeable." Do you see that?

25 A. I do.

1 Q. It says, "I'm very knowledgeable in the
2 outbound process in our distribution center. I
3 understand how each departments works, and how
4 their methods affect each other, including the MPB
5 and SAIL departments." Do you see that?

6 A. I do.

7 Q. Okay. With your 16 years of experience
8 within the distribution center, and the fact that
9 you're understandably very knowledgeable in the
10 outbound process, do you have any appreciation
11 whatsoever whether or not anybody in the
12 distribution center was doing any type of
13 suspicious order monitoring?

14 MS. SWIFT: Object to the form. Vague.

15 A. I don't have any knowledge of whether the
16 distribution itself was even doing suspicious
17 order monitoring. I don't know what party was
18 responsible for that. It was not something that
19 was ever part of my details.

20 Q. Did you have any knowledge that there
21 existed such a suspicious order report that we
22 just looked at?

23 MS. SWIFT: Object to the form.

24 A. My extent -- the extent of my knowledge
25 of a suspicious order report was that one existed.

1 I didn't know anything beyond that.

2 Q. Okay. In what context did you know that
3 one existed?

4 A. I had heard the term used before.

5 Q. By who?

6 A. I -- I don't recall.

7 Q. I'll show you what I'll mark as Exhibit
8 Number 5.

9 - - - - -

10 (Thereupon, Deposition Exhibit
11 Walgreens-Diebert 5, Suspicious
12 Controlled Drug Orders for July 2007
13 WAGMDL00390362 - 00390363, was
14 marked for purposes of
15 identification.)

16 - - - - -

17 Q. This is P-WAG-2589. If you don't mind,
18 keep that -- I think it was number 3, the
19 suspicious order report, right there with it,
20 because I want to ask you some questions, because
21 there's a little bit of differences between these
22 two docs.

23 With 2589, do you see at the top of the
24 page it -- again, it has a date. This date is
25 August 6, 2007; do you see that?

1 A. Yes.

2 Q. And, again, it says suspicious controlled
3 drug orders for the month of July 2007; do you see
4 that?

5 A. I see that.

6 Q. And this one says for Warehouse 013; do
7 you see that?

8 A. I do see that.

9 Q. Okay. And I think the last time you told
10 me Perrysburg was 11. Was it 13 at one point in
11 time?

12 A. No. 13 is the C-II DC at Perrysburg
13 distribution center.

14 Q. Okay. So what is -- so what is 11?

15 A. 11 is the main DC itself.

16 Q. Okay.

17 A. 11 is the distribution center that sends
18 out all the non-pharmacy items. 13 is the DC that
19 handled only Schedule II.

20 Q. Okay. Okay. Well, let's go back to
21 number 3 then for a minute, because I think that
22 helped me a little bit.

23 So, again, go back to where we were
24 before, page 441 at the bottom right.

25 A. Okay.

1 Q. So I understand you to be -- to say that
2 DC code 11 would have been the warehouse that you
3 worked in as a SAIL coordinator for III through
4 Vs?

5 A. That's correct.

6 Q. So any item that's distributed from that
7 distribution center would have been a -- that's a
8 controlled drug would have been a III through V
9 controlled drug; is that fair?

10 A. Any controlled drug that was distributed
11 from DC 11 during the dates that we were
12 distributing would have been a C-III through V.

13 Q. Okay. So if you flip to the very next
14 page and look at all these orders for these
15 hydrocodone products, you're able to confidently
16 tell me that these were Schedule III drugs,
17 because these are coming from your distribution
18 center, number 11?

19 MS. SWIFT: Object to the form.
20 Foundation.

21 A. If these were distributed from DC 11,
22 they would have been a Schedule III, IV or V drug.

23 Q. Okay. And so this report that's talking
24 about this hydrocodone product, which is a
25 Schedule III drug, you were never shown or given

1 this report as the SAIL coordinator for Schedule
2 III through V?

3 MS. SWIFT: Object to the form.
4 Foundation.

5 A. I don't know what class drug that was at
6 the time, but I was also never -- I never saw this
7 document before. I've never seen a suspicious
8 drug order report before today.

9 Q. Okay. So if you go down to the very
10 bottom of that page, do you see that there's a
11 new -- a new entry and a new drug listed there?

12 A. I see that there's an entry and a drug
13 listed.

14 Q. Okay. And it's a new -- a new NDC
15 number, and then the drug that's defined that's
16 listed there under the description is oxycodone;
17 do you see that?

18 A. I see that.

19 Q. Do you have an understanding that
20 oxycodone is a Schedule II drug?

21 A. It is a Schedule II drug currently.

22 Q. Okay. And if we look there under the
23 order history for this particular drug that was
24 flagged on the suspicious control drug order
25 report, do you see that it came from distribution

1 center code 13?

2 A. I see that.

3 Q. Okay. And does that -- that makes sense,
4 right, because that's the C-II distribution center
5 at Perrysburg, right?

6 A. DC 13 is the C-II distribution center at
7 Perrysburg.

8 Q. Okay. So when we look at these different
9 drugs that were shipped that are listed here on
10 the report, we can look at the code of the
11 distribution center to determine whether or not
12 they were Schedule III or Schedule II drugs,
13 correct?

14 MS. SWIFT: Object to the form.
15 Foundation.

16 A. At the time -- I don't know.

17 Q. Okay. Well, the Schedule II drugs, like
18 oxycodone, would have come from distribution
19 center code 13, correct?

20 A. That's -- that's correct.

21 Q. And Schedule III through V drugs, like
22 the hydrocodone product we just looked at, would
23 come from distribution code 11, correct?

24 A. Yes. According to this report, during
25 that time period, those are the DCs those would

1 have come out of.

2 Q. Okay. And you agree that this report
3 with these suspicious orders listed on it include
4 both Schedule II drugs as well as Schedule III
5 through V drugs?

6 MS. SWIFT: Object to the form.
7 Foundation.

8 A. This report shows both C-III through V
9 and C-II drugs on it.

10 Q. And you would agree that would be
11 consistent with the regulation we looked at a few
12 minutes ago that made no distinction whatsoever
13 between Schedule II drugs and Schedule III through
14 V drugs?

15 MS. SWIFT: Object to the form.
16 Foundation. Calls for a legal conclusion.

17 A. I don't know.

18 Q. Do you recall looking at the regulation?

19 A. I recall looking at the paragraph on
20 that.

21 Q. Do you -- do you recall there being any
22 distinction made whatsoever over what schedule the
23 drug was?

24 MS. SWIFT: Object to the form.

25 A. There was no distinction in the paragraph

1 that you read, but I also don't have any
2 correlation between that and this report.

3 Q. Sure. But the regulation that we looked
4 at applied to all controlled substances, according
5 to this language, correct?

6 MS. SWIFT: Object to the form.

7 A. That's what the paragraph said, yes.

8 Q. Okay. So if we look back to Exhibit
9 Number 5 --

10 MR. GADDY: 2589.

11 Q. Now, this report looks similar, but it's
12 a little bit different. It's got the heading at
13 the top that says "for warehouse 13." Do you see
14 that?

15 A. I do see that.

16 Q. Okay. With looking at this page and the
17 next page, I know it looks substantially similar
18 to the last one, but have you ever seen this
19 report before?

20 A. I have not.

21 Q. You said that you had heard, and you've
22 been at the distribution center for 16 years, and
23 you've talked about how you have a good
24 understanding or a good knowledge of all the
25 different departments or divisions. Do you have

1 an understanding of where within the distribution
2 center this suspicious order report was located?

3 A. I said I have an understanding of the
4 outbound process, and that's in how it affects my
5 office in getting paperwork and orders completed
6 and done. I have not ever seen a suspicious order
7 at our DC, and I don't know that our DC even is
8 responsible for that.

9 Q. As far as you know, nobody at the
10 distribution center has any responsibilities for
11 suspicious order monitoring; is that fair?

12 MS. SWIFT: Object to the form.
13 Mischaracterizes the testimony.

14 A. I don't know who is responsible for it.

15 Q. Do you know that somebody is?

16 A. I don't know who -- who is responsible
17 for it.

18 Q. When you say you don't know who is
19 responsible for it, you imply that somebody is.
20 So that's why I'm asking.

21 Do you know whether or not anybody at the
22 distribution center has any responsibility
23 whatsoever for suspicious order monitoring?

24 MS. SWIFT: Object to the form.

25 A. I don't know if anybody is or is not

1 responsible for suspicious drug order report at
2 the distribution center.

3 Q. Thank you.

4 Let me show you what I'll mark as Exhibit
5 6.

6 - - - - -

7 (Thereupon, Deposition Exhibit
8 Walgreens-Diebert 6, Handling
9 Suspicious Drug Orders Policy
10 WAGFLDEA00001854 - 00001855, was
11 marked for purposes of
12 identification.)

13 - - - - -

14 Q. This is P-WAG-5004. If you look down at
15 the bottom of the page, do you see what looks like
16 a web address?

17 A. I do see that.

18 Q. Okay. And does Walgreens have an
19 intranet type program to keep policies and
20 procedures, and things of that nature?

21 A. We have an intranet.

22 Q. And are there policy and procedure type
23 documents that are stored on there that you can
24 access?

25 A. I don't know what --

1 MS. SWIFT: Object to the form. Vague.

2 A. -- I don't know what policies are on the
3 intranet. We do have policies for the
4 distribution center, but I don't know if they're
5 stored on the intranet.

6 Q. Okay. The title of this policy is
7 "handling suspicious drug orders." Do you see
8 that?

9 A. I see that.

10 Q. Okay. And if you look down at the bottom
11 of the paragraph, it says this policy originated
12 in 1998, and that it was revised, and we're
13 looking at the revised version from February 15,
14 2005; do you see that?

15 A. I'm sorry, where are you at?

16 Q. At the bottom of the paragraph. It's
17 right on the screen, too, highlighted.

18 A. Okay. I do see the revised and the
19 originated dates that are on there.

20 Q. Okay. Have you ever seen this policy
21 before?

22 A. I have not.

23 Q. Is this a policy that you've ever recall
24 being trained or educated on by anybody at
25 Walgreens?

1 A. No.

2 Q. It says, "the logistics and planning
3 department sends the suspicious controlled drug
4 orders report to all distribution centers. The
5 report lists controlled drug orders that may be of
6 unusual size for a store in its category, of
7 unusual frequency for a store in its category, or
8 deviating from a normal pattern for a store in its
9 category." Do you see that?

10 A. I see that it says that.

11 Q. Have -- did you have any understanding
12 prior to reading that about what suspicious
13 controlled drug order reports were supposed to
14 contain?

15 A. I did not.

16 Q. It goes on to say that the distribution
17 center must -- must file all reports for five
18 years. Do you see that?

19 A. I see that it says that, yeah.

20 Q. Now that we've looked at this, this
21 policy, do you have any memory of who or what
22 department or division at the distribution center
23 would have been in charge of receiving suspicious
24 controlled drug reports?

25 A. I don't have any knowledge of who would

1 have been responsible for that.

2 Q. And you certainly were never shown any of
3 the suspicious controlled drug reports?

4 A. No. This wouldn't have had anything to
5 do with my position.

6 Q. And you were never asked to hold any
7 orders while -- while orders that had been placed
8 by the stores were evaluated for whether or not
9 they were included on any suspicious controlled
10 drug order report?

11 MS. SWIFT: Object to the form.

12 A. I don't recall ever being asked to do
13 that, no.

14 Q. Okay. You don't ever recall being asked
15 to do any investigation or follow-up or due
16 diligence into any order that was received by you
17 to be processed; is that fair?

18 MS. SWIFT: Object to the form.

19 A. I was never asked to look into any -- any
20 orders of any kind. We simply processed the
21 orders that we received every day.

22 Q. If you flip the page, the policy on this
23 page is handling suspicious orders and loss of
24 controlled drugs; do you see that?

25 A. I see that.

1 Q. And it says, "distribution centers must
2 file all suspicious controlled drug order reports
3 for five years. The administration manager must
4 complete the report of theft or loss of controlled
5 substances when any of the following circumstances
6 occur." Do you see this?

7 A. I do see that.

8 Q. Before we get to that; did your -- any of
9 your duties or responsibilities revolve around
10 theft or loss or shrinkage of controlled
11 substances?

12 A. No. None of my duties were part of that.

13 Q. Okay. And so this policy came into play
14 when, then there's three bullets, one; "theft of
15 controlled drugs, no matter how small." The
16 second is "substantial loss of controlled drugs,"
17 or three, "all in-transit losses or thefts." Do
18 you see that?

19 A. I see that it says that.

20 Q. Okay. And this is just applying to, or
21 talking about theft or losses of drugs, correct?

22 A. To my -- yes. According to what it says.

23 Q. Other than you, who looked at the orders
24 for Schedule III drugs that came into the
25 distribution center?

1 MS. SWIFT: Object to the form.

2 Foundation.

3 A. I don't know that there was anybody else
4 that looked at the orders. I don't know.

5 Q. As far as you know, it was just you?

6 MS. SWIFT: Object to the form.

7 A. As far as I know, it was just the SAIL
8 department at the DC that looked at it. There was
9 no other department at the DC that would have
10 looked at those, that I know of.

11 Q. And when you got those orders in, your
12 process was to process the orders?

13 A. Yes, sir.

14 Q. And because you've never received any
15 training or education or instruction on
16 identifying suspicious orders, I'm presuming that
17 during the course of your time as a SAIL
18 coordinator, you never told anybody that you had
19 identified any type of suspicious order?

20 MS. SWIFT: Object to the --

21 Q. Is that -- would that be fair?

22 MS. SWIFT: -- object to the form of the
23 question.

24 A. So there would not have been a reason for
25 me to consider the orders that we got suspicious.

1 I was never trained on suspicious orders or what
2 to look for. That wasn't something that we did at
3 the DC that I'm aware of.

4 Q. Okay. So the C-III orders would come in
5 to you as a SAIL coordinator, and you would
6 process the orders, correct?

7 A. That's correct.

8 Q. And you weren't trying to identify
9 suspicious orders?

10 MS. SWIFT: Object to the form. Vague.

11 A. We would run a report every day to look
12 for any orders that might be higher than usual,
13 above a certain threshold that the report was
14 looking for. And we would check that against the
15 store's order history to see if it was in line
16 with what they usually get.

17 Q. Sure. And we'll look at some of those
18 policies, and I'll ask you about that in just a
19 minute. But I'm specifically talking about the
20 suspicious order policy that we looked at that
21 identifies orders of unusual size, unusual
22 frequency, orders that deviate from a store's
23 ordering pattern.

24 A. I was never trained on anything to do
25 with suspicious orders.

1 Q. Okay. Let me show you what I'll mark as
2 number 7. It's going to be P-WAG-2683.

3 - - - - -

4 (Thereupon, Deposition Exhibit
5 Walgreens-Diebert 7, December 27,
6 2007 Letter WAGMDL00753976 -
7 00753977, was marked for purposes of
8 identification.)

9 - - - - -

10 Q. And do you see at the top of the page
11 this is -- this particular letter is on US
12 Department of Justice DEA letterhead?

13 A. I see that.

14 Q. Okay. And do you see that the letter is
15 addressed to Walgreens Corporation at Perrysburg,
16 Ohio?

17 A. I see that.

18 Q. Okay. And that the date of this letter
19 is December 27, 2007; do you see that?

20 A. Yes.

21 Q. Do you recall if you've ever seen this
22 before?

23 A. I have not ever seen this before, that I
24 can remember.

25 Q. Okay. This is the first time that you're

1 ever seeing this letter?

2 A. I believe so.

3 Q. Let's look at some of it. It starts, it
4 says, "Dear registrant. This letter is being sent
5 to every entity in the United States registered
6 with the DEA to manufacture or distribute
7 controlled substances". Do you see that?

8 A. I do see that.

9 Q. Okay. And, obviously, this letter was
10 sent to Walgreens at Perrysburg in December of
11 2007, correct?

12 MS. SWIFT: Object to the form.

13 A. I see that.

14 Q. If you go to the next paragraph, it says,
15 "in addition to, and not in lieu of the general
16 requirement under 21 USC 823 that manufacturers
17 and distributors maintain effective controls
18 against diversion, DEA regulations require all
19 manufacturers and distributors to report
20 suspicious orders of controlled substances." Do
21 you see that?

22 A. I see that it says that.

23 Q. Okay. Now that we're looking at this
24 letter from December of 2007, do you have any
25 recollection now that after this letter was

1 received that somebody from Walgreens came and
2 told you that there was an obligation to report
3 these suspicious orders?

4 A. No one ever came to tell me that we had
5 an obligation for that. I wasn't the C2 manager
6 at the time, so I wouldn't have seen this.

7 Q. Okay. Well, do you see anywhere in the
8 body of the paragraph that we just read that said
9 report suspicious orders of C-II drugs, or did it
10 say controlled substances?

11 A. It says controlled substances, but I have
12 not seen this before.

13 Q. Okay. And your job as the SAIL
14 coordinator for III through Vs involved controlled
15 substances, correct?

16 A. It involved processing orders for
17 controlled substances III through V. But I don't
18 remember the date, so I don't know if this would
19 have been during that time or not.

20 Q. Okay. It goes on to say, "Title 21, CFR
21 1301.74B specifically requires that a registrant
22 design and operate a system to disclose to the
23 registrant suspicious orders of controlled
24 substances." Do you see that?

25 A. I see that it says that.

1 Q. And, again, it doesn't say just C-IIs,
2 does it?

3 A. No, it does not. It just says controlled
4 substances.

5 Q. It goes on to say, "the regulation
6 clearly indicates it's the sole responsibility of
7 the registrant to design and operate such a
8 system." Do you see that?

9 A. I see that it says that.

10 Q. Okay. Did you at your time as a -- as
11 the SAIL coordinator at Walgreens, did you ever
12 receive any training or education on any system
13 that Walgreens had that would disclose suspicious
14 orders?

15 MS. SWIFT: Object to the form. Vague.

16 A. I did -- I don't recall ever receiving
17 any training on suspicious orders at all.

18 Q. What about any system that was designed
19 to identify suspicious orders?

20 A. I don't know of any system that we use
21 for that, if -- if we do that at our DC.

22 Q. In the next paragraph, it says, "the
23 regulation also requires that the registrant
24 inform the local DEA office of suspicious orders
25 when discovered by the registrant." Do you see

1 that?

2 A. I see that it says that.

3 Q. Okay. And the phrase "when discovered"
4 is emphasized in the letter, correct?

5 A. I'm sorry, where is that? Yes. I see
6 that. Sorry.

7 Q. Did you have any understanding or
8 appreciation at any time while you were the SAIL
9 coordinator in charge of C-III to V narcotics at
10 Perrysburg that there was any immediate
11 notification to the DEA of any suspicious orders
12 that came in for those Schedule III to V drugs?

13 MS. SWIFT: Object to the form. Vague.
14 Foundation.

15 A. I don't know who the registrant is, so I
16 don't know who would have been responsible for
17 that. But it was not my department.

18 Q. Okay. And I'll represent to you that in
19 this context the registrant means Walgreens, not
20 any particular person.

21 So with that clarification, do you have
22 any understanding that you or anybody else within
23 the distribution center made any immediate or
24 timely reports of suspicious orders to the DEA for
25 Schedule III to V controlled drugs?

1 MS. SWIFT: Object to the form.

2 Foundation.

3 A. I don't know who would have been
4 responsible for suspicious orders or reporting
5 them.

6 Q. Okay. But when those orders came in to
7 the distribution center, they came in to you, the
8 SAIL coordinator, correct?

9 A. C-III through V orders while we were
10 distributing came through my queries and reports,
11 orders, yes.

12 Q. Okay. And then you processed the orders?

13 A. Yes.

14 Q. It goes on to say, "filing a monthly
15 report of completed transactions, such as
16 excessive purchase reports or high unit purchases,
17 does not meet the regulatory requirement to report
18 suspicious orders." Do you see that?

19 A. Yes.

20 Q. Does that seem pretty clear?

21 MS. SWIFT: Object to the form.

22 A. I have no idea. I don't have anything to
23 compare it to.

24 Q. "Registrants are reminded that their
25 responsibility does not end merely with the filing

1 of a suspicious order report. Registrants must
2 conduct an independent analysis of suspicious
3 orders prior to completing a sale to determine
4 whether the controlled substances are likely to be
5 diverted from legitimate channels." Do you see
6 that?

7 A. I see that it says that.

8 Q. And I think you've already told me that
9 you never conducted any independent analysis of
10 any of the orders that came in as far as
11 determining whether or not they were likely to be
12 diverted?

13 MS. SWIFT: Objection. Mischaracterizes
14 the testimony.

15 A. Well, I'm not sure what diverted means.
16 But we did not -- to my knowledge anywhere in the
17 DC, we did not research any trends with markets
18 and the items that they were ordering for
19 controlled substances.

20 Q. You didn't look into -- do any research
21 on the population size that a particular Walgreens
22 store might be serving?

23 A. No. The distribution center wouldn't
24 have done that.

25 Q. You didn't look into the number of

1 prescribers that a particular store would have
2 been filling prescriptions for?

3 A. No. Not from a SAIL coordinator
4 position.

5 Q. You didn't look into the geographical
6 distance between doctors that were writing
7 prescriptions for the store that was filling those
8 prescriptions?

9 A. No. That's not something we would have
10 looked into from my office.

11 Q. You didn't look into the geographic
12 distance between the location where a patient
13 lived and the location of the Walgreens store that
14 that patient was going to to have the prescription
15 filled?

16 A. That's nothing I would have done from my
17 position either.

18 Q. If you'd turn the page and go to the top
19 of the second page, do you see there the top
20 paragraph starts "registrants"?

21 A. Yes, I do. I'm sorry.

22 Q. It says, "registrants that rely on rigid
23 formulas to define whether an order is suspicious
24 may be failing to detect suspicious orders. For
25 example, a system that identifies only" -- or

1 excuse me -- "that identify orders are suspicious
2 only of a total amount of a controlled substance
3 ordered during one month exceeds the amount
4 ordered the previous month by a certain percentage
5 or more is insufficient." Do you see that?

6 A. I see that.

7 Q. Let's go down to the second paragraph,
8 and the second sentence starts "daily."

9 A. I see that.

10 Q. It says, "daily, weekly, or monthly
11 reports submitted by registrant indicating
12 excessive purchases do not comply with the
13 requirements to report suspicious orders, even if
14 the registrant calls such reports suspicious order
15 reports." Do you see that?

16 A. I see that it says that.

17 Q. Now that we've read through a substantial
18 portion of this -- of this letter, does it bring
19 back your memory that you actually have seen this
20 before?

21 A. I have never seen this before.

22 Q. If we read the next paragraph, it says,
23 "lastly, registrants that routinely report
24 suspicious orders yet fill these orders without
25 first determining that the order is not being

1 diverted into other than legitimate medical,
2 scientific and industrial channels may be failing
3 to maintain effective controls against diversion."
4 Do you see that?

5 A. I see it says that.

6 Q. And, again, you as the SAIL coordinator,
7 when orders came in, you did not have as a regular
8 part of your practice to hold and do any
9 investigation into any of those orders; fair?

10 MS. SWIFT: Object to the form.
11 Mischaracterizes the testimony.

12 A. No. When we received the orders, we
13 processed the orders.

14 Q. Okay. So the date of that letter is
15 what?

16 A. 2007.

17 Q. Okay. And if you go back to -- if you go
18 back to Exhibit Number 3, which was the one-page
19 e-mail with the report attached.

20 A. Uh-huh.

21 Q. And flip for me just one more time to
22 page 441, just so we can stay at the same place
23 we've been at the entire time.

24 And, again, the date of this report that
25 we looked at earlier is August 2010, correct?

1 A. That's correct.

2 Q. So this is two-and-a-half, almost three
3 years after that letter, correct?

4 A. Yes. Correct.

5 Q. And these are the -- the title is
6 "suspicious controlled drug orders" is the title
7 to the right of the date?

8 A. Yes.

9 Q. Who was Dan Coughlin?

10 A. I believe Dan Coughlin was a vice
11 president of DC and supply chain. He didn't work
12 at the distribution center.

13 Q. Would you have any interaction with him?

14 A. None.

15 Q. Is he -- did you have any appreciation
16 for whether or not he has purview over the
17 distribution centers, or do you know?

18 MS. SWIFT: Object to the form. Vague.

19 A. I don't know.

20 Q. I'll show you what I'll mark as Exhibit
21 Number 8.

22 - - - - -

23 (Thereupon, Deposition Exhibit

24 Walgreens-Diebert 8, Perrysburg

25 Distribution Center DEA Review

1 WAGMDL00757148 - 00757163, was
2 marked for purposes of
3 identification.)

4 - - - - -

5 Q. Do you see at the top of the first page,
6 the top left-hand corner, it says "Perrysburg
7 distribution center DEA review"?

8 A. I do see that.

9 Q. And this is dated December of 2008,
10 correct?

11 A. Correct.

12 Q. And so this is approximately one year
13 after we -- after that letter that we just looked
14 at from the DEA, correct?

15 A. Correct. Yes.

16 Q. And -- okay. And that was after -- and
17 do you recall that letter said that submitting
18 monthly excessive reports did not comply with the
19 regulations; do you recall that?

20 MS. SWIFT: Object to the form. Calls
21 for a legal conclusion.

22 A. I don't know.

23 Q. Well, go back to the letter. The second
24 page, second paragraph, the second sentence. It
25 starts "daily." Do you see where it says, "daily,

1 weekly, or monthly reports submitted by a
2 registrant indicating excessive purchases do not
3 comply with the requirement to report suspicious
4 orders"?

5 A. I see that it says that.

6 Q. Okay. And down at the bottom, do you see
7 the signatory of this document is a Joe
8 Rannazzisi, and his title was Deputy Assistant
9 Administrator of the Office of Diversion Control;
10 do you see that?

11 A. I see that.

12 Q. And you recognize this as being a letter
13 from the DEA?

14 A. That's the letterhead.

15 Q. Okay. And so go with me back to Exhibit
16 Number 8, and then turn with me, please, to Bates
17 number ending 160. Are you with me?

18 A. Yes.

19 Q. Okay. And you see halfway down the page
20 there's the heading "controlled drug report"?

21 A. I see that.

22 Q. And it says, "Walgreens is required to
23 have a process to disclose to the DEA any
24 suspicious orders of controlled drugs that deviate
25 from the normal size, pattern, and frequency." Do

1 you see that?

2 A. I see that it says that.

3 Q. It goes on to say, "any orders that are
4 deemed to be suspicious are" reported -- excuse
5 me -- "are required to be reported to the DEA upon
6 discovery." Do you see that?

7 A. I see that.

8 Q. And you agree that's consistent with what
9 we just read in that letter from the DEA?

10 A. I agree that that is similar to what we
11 read in the letter, yes.

12 Q. And it continues to say that "Walgreens
13 produces a monthly suspicious controlled drug
14 order report." Do you see that?

15 A. I see that.

16 Q. And then there's portions of this that
17 obviously I'm not able to ask you about. But
18 that's where it ends, that Walgreens produces a
19 monthly suspicious controlled drug order report,
20 correct?

21 A. I see that.

22 Q. And we know from that -- from looking at
23 those other reports that those reports were coming
24 out even in, I think, August of 2010, correct?

25 MS. SWIFT: Objection. Lacks foundation.

1 A. According to the report that you showed
2 me, we were doing those in 2010.

3 Q. Okay. Here in this 2008 review, in the
4 recommendation it says, "we recommend discussions
5 continue with the cross-functional team consisting
6 of logistics, corporate, regulatory, law, and loss
7 prevention departments." Do you see that?

8 A. I see that.

9 Q. And, again, this is in December of 2008,
10 correct, up at the top left-hand corner?

11 A. Correct.

12 Q. And Dan Coughlin is the individual who --
13 it looks like the far right-hand column is for
14 management response?

15 A. He's who is listed there, yes.

16 Q. Okay. It says, "we will coordinate
17 another meeting during the third quarter to
18 continue discussions on reporting suspicious
19 controlled drug orders. Estimated date for next
20 cross-functional meeting for the updated
21 suspicious controlled drug order identification
22 methodology is May 31, 2009." Do you see that?

23 A. I see that.

24 Q. Would you agree with me there was not
25 exactly a sense of urgency in getting that meeting

1 set?

2 MS. SWIFT: Objection. Lacks foundation.

3 A. I -- the only thing I can take from this
4 is that they were paying attention to it and
5 trying to make sure that they were staying in
6 compliance by scheduling these meetings and
7 reviews.

8 Q. Okay. And they identified an issue, they
9 had a recommendation, and they decided to set a
10 meeting more than five months away, correct?

11 MS. SWIFT: Objection. Lacks foundation.

12 A. I don't see any issue identified. I just
13 see that they're trying to maintain and keep
14 review of those suspicious orders, according to
15 this document.

16 Q. Okay. Well, the far left-hand column is
17 entitled "issue." That's why I used that term.
18 Do you see what I'm referring to there?

19 A. The far left-hand?

20 Q. Sure. At the top of the page?

21 A. Oh, I see. I'm sorry.

22 Q. So it identified an issue. It apparently
23 identified some risks that we can't see. And then
24 they had some recommendations, only some of which
25 we can see, and they set a meeting for over five

1 months after this report, correct?

2 MS. SWIFT: Objection. Lacks foundation.

3 A. Looking at this document, I -- there's no
4 reason that I would think that that issue has
5 anything to do with the controlled drug reporting
6 column. They're separate.

7 Q. I'm confused now. Explain to me what
8 you're saying.

9 A. So just looking at this page, having the
10 issue above doesn't necessarily mean to me that
11 they're related to each other, that the controlled
12 drug reporting column is related to the issue. I
13 would have to review the document.

14 Q. Well, if you just flip back through every
15 page, do you see that all of the columns are
16 identical; issue, risk, recommendation, management
17 response?

18 A. I see that it's that way, yes.

19 Q. Okay. And so what's listed under the
20 "issue" column for controlled drug reporting is
21 they're discussing Walgreens' monthly suspicious
22 controlled drug order report, right?

23 A. They are discussing that they're doing it
24 and going to report -- or have a meeting scheduled
25 to reexamine it.

1 Q. How long is that meeting set out in the
2 future?

3 A. Well, according to the date on this
4 document and the date they have for the next
5 meeting, it is approximately five months.

6 Q. Was Deb Bish the C2 manager when you
7 started at Walgreens in '03?

8 A. No. When I started in 2003, Deb Bish was
9 in a different department. I don't know what
10 department it was. However, while we were
11 distributing C-IIIs, she was the only C2 function
12 manager for that department.

13 Q. Okay. There's never been another C2
14 function manager?

15 A. Not while we were distributing, no.

16 Q. At any point in time as the SAIL
17 coordinator for C-III through Vs at Perrysburg did
18 you ever get notification that somebody, whether
19 it was corporate or loss prevention or logistics,
20 or whoever, was cutting any of the orders that
21 were coming in?

22 MS. SWIFT: Object to the form. Vague.

23 A. I don't recall ever hearing of any order
24 adjustments for C-III through Vs while I was a
25 SAIL coordinator.

1 Q. And you were the SAIL coordinator up
2 until when you stopped distributing in 2013,
3 correct?

4 A. I was the SAIL coordinator then, yes. I
5 don't know what day we stopped just distributing,
6 though.

7 Q. I'll show you what I'll mark as Exhibit
8 Number 9. This is P-WAG-250.

9 - - - - -

10 (Thereupon, Deposition Exhibit
11 Walgreens-Diebert 9, E-mail Chain
12 WAGMDL00751806 - 00751807, was
13 marked for purposes of
14 identification.)

15 - - - - -

16 Q. And this is another e-mail chain, and
17 I'll represent to you it's going to deal with a
18 policy chain -- change. If you flip to the second
19 page and go down to the bottom of the page. And
20 you see the first e-mail in the chain is from Dan
21 Coughlin?

22 A. I do see that.

23 Q. And the subject line of this e-mail is
24 "suspicious drug order report online DEA manual;"
25 do you see that?

1 A. I see that.

2 Q. It says, "Shaun will be adjusting the
3 online manual for the DEA under legal, affecting
4 inspection, security, and DEA communications. The
5 changes will reflect the cessation of the
6 suspicious controlled drug report based on the new
7 prevention program controlled substance order
8 monitoring system." Do you see that?

9 A. I see that.

10 Q. And this e-mail is dated March 30, 2012,
11 correct?

12 A. I see that, too, yes.

13 Q. The body of the e-mail goes on to say,
14 "this system prevents the distribution centers
15 from receiving orders that would be considered
16 suspicious." Do you see that?

17 A. I see that.

18 Q. And then if you go -- flip to the first
19 page, in the middle of the page under "handling
20 suspicious drug orders," you'll see the --
21 somebody copy and pasted in there, but what will
22 ultimately become the new policy. Do you see that
23 heading there?

24 A. I do see that.

25 Q. Okay. It says, "effective calendar year

1 2012, the controlled substance order monitoring
2 and prevention systems prevent suspicious
3 controlled drugs from being shipped to the stores.
4 In calendar year 2012, because of the program
5 mentioned, suspicious controlled drug order
6 reports are no longer generated as their shipment
7 is prevented by the system." Do you see that?

8 A. I see that it says that.

9 Q. From your perspective as the SAIL
10 coordinator, do you recall there ever being an
11 implementation of this change in policy that
12 impacted anything you did on your end?

13 MS. SWIFT: Object to the form.
14 Foundation.

15 A. I don't recall ever receiving any
16 information on this at all, so it would not have
17 affected what I was doing.

18 Q. Do you ever recall being notified that
19 there was some controlled substance order
20 monitoring system that was cutting or reducing
21 orders?

22 A. I don't recall ever receiving that
23 information as the SAIL coordinator.

24 Q. Did the format or the manner in which you
25 received the orders ever -- ever change, that you

1 recall?

2 MS. SWIFT: Object to the form. Vague.

3 A. The only change that I can recall is when
4 we stopped distributing, and I didn't get the
5 orders anymore.

6 Q. When you got the orders, and did those
7 orders come straight in from the store?

8 A. I -- I don't know. I don't -- the orders
9 are generated at the store, there's some steps
10 behind the scenes that I'm not familiar with, and
11 then we receive the orders.

12 Q. Okay. When you received the orders, did
13 you receive them electronically, or a printout,
14 or --

15 A. They were all electronic.

16 Q. And when you received the orders, you
17 processed them?

18 A. Correct.

19 Q. When you were processing orders for C-III
20 through V drugs, approximately how many stores
21 were you processing those orders for?

22 MS. SWIFT: Object to the form.
23 Foundation.

24 A. I couldn't tell you. I can tell you that
25 we processed general orders for about 150 stores a

1 day on average. But I don't know if they all had
2 controls, or how much -- how large those orders
3 might have been.

4 Q. So the universe of stores that you were
5 processing C-III through Vs for was much smaller
6 than what you're currently signing off on C-II
7 orders for; is that fair?

8 A. Yes. When we distributed C-III through
9 Vs, we only distributed to stores that our DC
10 serviced within our geographical location.

11 Q. Do you know how many stores while you
12 were SAIL coordinator from 2008 through 2013,
13 whenever Walgreens stop distributing, do you know
14 how many stores Walgreens serviced C-IIIs for?

15 A. I do not know that.

16 MR. GADDY: Okay. I'm going to change
17 subjects. This might be a good time to take
18 another break.

19 THE VIDEOGRAPHER: Going off the record
20 at 10:39 a.m.

21 (Recess had.)

22 THE VIDEOGRAPHER: We're back on the
23 record at 11:00 a.m.

24 Q. Ms. Diebert, are you familiar with a
25 manual at -- within the distribution center, the

1 CM-15?

2 A. I am not.

3 Q. Are you familiar with any Walgreens
4 procedural -- sorry -- Walgreens procedure manual
5 the distribution center procedures for handling
6 controlled drugs?

7 A. I am not.

8 Q. Do you recall ever being educated or
9 trained on any such process?

10 A. I do not.

11 Q. So what I think we've established is that
12 when you were the SAIL coordinator for C-III
13 through Vs, when those orders came in, that you
14 would process the orders. So what I want to make
15 sure I have an understanding of is step-by-step
16 what you would do to process those orders. Can
17 you explain that to me?

18 A. While I was the SAIL coordinator when we
19 distributed C-III through Vs, we would check the
20 query that would show any large orders, and we
21 would check those large orders against the store's
22 regular orders. And when we were done with that,
23 we would process orders.

24 Q. Okay. So the second part, that's what
25 I'm interested in, the process orders. What does

1 that mean?

2 A. That just means that our computer room
3 would electronically process the orders which
4 would generate the pick labels for the pickers to
5 pick.

6 Q. Okay. What does that mean?

7 A. Which part? So our computer room is who
8 processes the orders. Once they do that, it feeds
9 into a printer. Based on where those items are
10 located in the distribution center, it would
11 create labels that the team members will get, and
12 they'll go out into the DC into the mods that
13 those items are in, and they'll pick into the
14 totes or full cases. They'll put them on a
15 conveyor, which will take it to the truck that it
16 belongs to.

17 Q. Okay. So what is the role of the picker?

18 A. The picker literally picks the items into
19 either a tote or a full case if they work in that
20 department. They'll take the label, they'll go to
21 the location, they'll put the label on the
22 product, and then they'll put it on the conveyor.

23 Q. And when you say conveyor, you're talking
24 about a conveyor belt that will take the -- take
25 the totes or the cases to the loading area?

1 A. That's correct.

2 Q. What is your role in processing the
3 orders after the excessive query report that we
4 talked about just a second ago?

5 A. The reports are the last thing that we do
6 before we process the orders.

7 Q. So after you run any excessive query
8 reports for, whether it's front end items, whether
9 it's pharmacy items, whether it's C-IIIs or C-Vs,
10 the orders get processed, the label is printed for
11 the pickers, and the pickers pick the items, bag
12 the items, and send them to the trucks?

13 A. That's correct.

14 Q. We talked a little bit about the phrase
15 "suspicious orders," and I think you told me you
16 heard of it. But what about the phrase "orders of
17 interest;" does that mean anything to you?

18 A. I have not heard that term before.

19 Q. I'll show you what I'll mark as Exhibit
20 Number 10.

21 - - - - -

22 (Thereupon, Deposition Exhibit

23 Walgreens-Diebert 10, May 11, 2011

24 E-mail WAGMDL00751821 - 00751823,

25 was marked for purposes of

1 identification.)

2 - - - - -

3 Q. This is going to be P-WAG-233. Do you
4 see this is an e-mail dated May 11, 2011?

5 A. I see that.

6 Q. And this is to Tammy Trumbull?

7 A. I see that.

8 Q. Do you know who that is?

9 A. Yes.

10 Q. Who is that?

11 A. That is now Tammy Hensley. She's our
12 admin manager.

13 Q. Okay. And we're going to spend the bulk
14 of our time talking about the attachment to this
15 e-mail. But you see here where what is written to
16 Tammy is -- at the end there it says, "I'm
17 attaching the policy I use for Rx questionable
18 orders if that will help you." Do you see that?

19 A. I see that.

20 Q. Do you understand what policy is being
21 referred to there?

22 A. Not until I see the policy.

23 Q. Okay. Well, let's look at it.

24 So on the next page, do you see at the
25 top of the page this is a Walgreens document for

1 the -- the subject of the document is the Rx
2 questionable order of quantity?

3 A. I do see that.

4 Q. And now that you've looked at it, do you
5 recognize what this policy is?

6 A. I do not recognize this policy.

7 Q. Okay. And it says that this particular
8 policy originated in December of 2006; do you see
9 that?

10 A. I see that.

11 Q. Okay. And what we're looking at here is
12 a revised policy from April of 2010; do you see
13 that?

14 A. I see that.

15 Q. Okay. And this was -- it says the
16 department is SAIL?

17 A. Yes.

18 Q. And that would have been your department?

19 A. At the Mt. Vernon distribution center,
20 yes. That was not our distribution center.

21 Q. Okay. Do different distribution centers
22 have different policies?

23 A. They may have at the time. I couldn't
24 tell you.

25 Q. And if you look at the first heading, it

1 says "purpose." Do you see that?

2 A. I see that.

3 Q. It says, "to establish procedures for
4 verifying questionable store order quantities on
5 Rx items." Do you see that?

6 A. Yes.

7 Q. And you've been telling me about some
8 type of excessive order query that you would do on
9 the C-III to Vs. Do you have an understanding of
10 whether or not this is talking about that process?
11 And if you want to read through it for a minute,
12 feel free.

13 MS. SWIFT: Take your time to read it if
14 you need to.

15 A. Okay. It seems similar to what we would
16 have done.

17 Q. Okay. This is generally describing the
18 process that you've been telling us about as far
19 as running the excessive order queries?

20 A. Yes.

21 Q. Do you know that there's a written policy
22 in place at Perrysburg that applied to the same
23 process?

24 A. I don't know that.

25 Q. Okay. So it says, "the purpose to

1 establish procedures for verifying questionable
2 store order quantities on Rx items." Do you see
3 that?

4 A. Yes.

5 Q. When it says "Rx items," what does that
6 mean to you in the context of the distribution
7 center?

8 A. Anything that needs a prescription.

9 Q. So that would apply to diabetes
10 medication, blood pressure medication, as well as
11 controlled substances; is that fair?

12 A. That's fair.

13 Q. It says, "the scope of this procedure
14 covers the steps in verifying questionable store
15 order quantities prior to order processing on Rx
16 items." And the procedure, it says, "the
17 responsibilities of the computer room personnel
18 and the SAIL team prior to order processing." Do
19 you see that?

20 A. I see that.

21 Q. Okay. And is that consistent with what
22 you've told me, that this is something you go
23 through, and I think you said it's the last thing
24 that you do before the order gets processed?

25 A. It is similar, yes.

1 Q. Okay. I think you've told me that you do
2 this process not only for pharmacy items and
3 controlled substances, but you also do this same
4 process for front end of the store items, correct?

5 A. That's correct.

6 Q. So you do the same process for the paper
7 towels, the toilet paper, the bubble gum, all that
8 stuff, too, as well?

9 A. Yes.

10 Q. It says for -- under the procedures, it
11 says, "once transmissions have been" -- well,
12 strike me. Let me ask you this real quick.

13 What's the involvement of the computer
14 room personnel in this process?

15 A. It depends on which DC. Some
16 distribution centers the computer room is solely
17 responsible for checking orders and processing
18 them. Some distributions centers the SAIL will
19 check orders and the computer room will process
20 them. At our distribution center, on Sundays the
21 computer room is solely responsible for it, and
22 then Monday through Thursday SAIL checks orders
23 and then the computer room does the processing.

24 Q. Okay. So you would be in charge of this
25 Monday through Thursday?

1 A. Correct.

2 Q. Okay. Does the computer room have any
3 involvement whatsoever on Monday through Thursday?

4 A. Not for our regular orders, no.

5 Q. Okay. Do you actually run the query, or
6 run the report that would give you a printout of
7 anything that flagged?

8 A. Yes.

9 Q. All right. So in number 1, it says,
10 "once transmissions have been received from the
11 stores to its fullest, it tells you to run a query
12 that would be printed for the next process cycle
13 date to be reviewed." It says, "any Rx order
14 greater than 24" -- can we just call that units?

15 A. Yes.

16 Q. Okay. "Any Rx order greater than 24
17 units of one item should print on a query and
18 store numerical order along with SS items." Do
19 you see that?

20 A. Yes.

21 Q. What is "SS items"?

22 A. Self-serve or front of store,
23 non-pharmacy items.

24 Q. Gotcha. Okay. So self-serve, meaning
25 the consider can grab it off the shelves

1 themselves?

2 A. They can grab it themselves, correct.

3 Q. Okay. So does that number -- I think
4 earlier today I asked you what the limit was that
5 would flag any pharmacy item, and I think you
6 didn't remember. Does that 24 jog your memory?

7 A. No. And it could have been different at
8 the DCs. I don't know what Mt. Vernon would have
9 done compared to Perrysburg.

10 Q. And you don't remember what Perrysburg
11 did?

12 A. No, I don't.

13 Q. Okay. But, anyway, the number generated
14 across any prescription item, according to this
15 policy, was the same?

16 A. Yes.

17 Q. Whether it's blood pressure medication,
18 diabetes medication, or controlled substances?

19 A. Yes. Depending on the query. Perrysburg
20 ran a query for controlled substances, and we ran
21 a separate query for non-pharmacy items. So in
22 reading this, it sounds like they may have just
23 run one query that would show everything over 24
24 SKUs totally. We ran a separate query for
25 controls versus non-pharmacy, and they would have

1 been different thresholds.

2 Q. Did you run different queries for
3 controlled versus regular pharmacy?

4 A. Regular pharmacy would have shown up on
5 the regular report because they weren't controlled
6 substances.

7 Q. Okay. So you ran a query for front end
8 plus regular pharmacy, and you ran a separate
9 query for controlled?

10 A. Correct.

11 Q. Okay. And do you know if that was
12 pursuant to any written policy?

13 A. I don't know that.

14 Q. How did you know to do that?

15 A. Tammy Trumbull, Hensley, who is the admin
16 manager now, was the SAIL coordinator when I took
17 that position over, and that is how she trained
18 me.

19 Q. Okay. But, anyway, according to the
20 policy, the report is run, and this one is 24
21 units, correct?

22 A. Yes. On this it is.

23 Q. Okay. And you don't remember what it was
24 for Perrysburg?

25 A. No, I don't.

1 Q. Do you remember if it was the same or
2 different for front end items and pharmacy
3 items -- excuse me -- front end items and
4 controlled items?

5 A. Perrysburg versus Mt. Vernon?

6 Q. No, no. Within Perrysburg, whether or
7 not the trigger number was the same or different
8 for controlled substances versus the pharmacy
9 items and non-controlled?

10 A. It was different.

11 Q. Then it goes on to say in the second
12 paragraph, it says, "the computer room or SAIL
13 personnel working the query will review the
14 listing. If there is a questionable quantity, the
15 pharmacy is contacted at that store and the order
16 is questioned." Do you see that?

17 A. Yes.

18 Q. It goes on to say, "if the order is
19 incorrect, the original order for the item is
20 deleted and rekeyed correctly." Do you see that?

21 A. I do see that.

22 Q. Is this accurately -- and I know this is
23 a Mt. Vernon document -- but is this accurately
24 describing what -- what your process was at
25 Perrysburg?

1 A. Not specifically. For controlled C-III
2 through V, if we did have something that got
3 flagged on the overage report, we would contact
4 the store if it looked like it wasn't in line with
5 their normal orders. And if it was a wrong order,
6 we would either delete it or decrease it. But we
7 wouldn't delete it and reenter an order.

8 Q. Okay. So would it be fair to say that
9 when you called the pharmacy, you were trying to
10 determine whether or not the order had been
11 entered in error?

12 A. Yes.

13 Q. So are you familiar with the phrase "fat
14 finger report"?

15 A. I'm familiar with fat fingering, but not
16 a specific report.

17 Q. Okay. Okay. So what you're looking for
18 here is fat fingering errors?

19 A. Yes.

20 Q. Okay. So you're looking for places where
21 somebody wanted one unit and asked for 100 units?

22 A. Exactly.

23 Q. Okay. And those are the type of
24 situations that would flag on this report and that
25 you would make a phone call to the pharmacy about?

1 A. That's correct.

2 Q. Okay. Why is that something that was
3 important to the distribution center?

4 A. We want to make sure that we were sending
5 the orders out the stores needed.

6 Q. Okay. If you sent an excessive quantity
7 that the store didn't need, would the store often
8 have to return those items?

9 A. We did not return items at the DC. I
10 don't know what processes the stores would have
11 used. They would have contacted their district
12 office, and then asset protection for their
13 geographical location would have been involved.
14 But they would not have come back to the
15 distribution center.

16 Q. Okay. Well, some aspect of your job
17 involved returns, right, or trying to lower
18 returns?

19 A. Not for Rx. Not for pharmacy items.

20 Q. Okay. So front end items, if you shipped
21 them too many rolls of toilet paper, would those
22 get returned to the distribution center?

23 A. There's criteria that the products have
24 to meet before we would approve a return. But
25 they would -- we do do that.

1 Q. And that's something that you want to
2 avoid; is that fair to say?

3 A. Yes. Yes.

4 Q. Okay. And why is it that you want to
5 avoid those types of returns?

6 A. Well, it doesn't suit the store or the
7 customers or the distribution center or Walgreens
8 in general to have excess stock sitting on the
9 shelves that's not getting sold. If we send too
10 much to one store, we could be shorting another
11 store and missing sales on that.

12 Q. Okay. So in addition to looking for
13 these fat finger errors, is there anything else
14 that you're looking for when you're reviewing this
15 excessive order report?

16 A. Not from a sales perspective, no.

17 Q. At any time -- so let me make sure I
18 understand your process.

19 If you have an order that flags on the
20 excessive order report, that, frankly, is a fat
21 finger report; do you agree with that?

22 A. Yes.

23 MS. SWIFT: Object to the form.

24 Q. And so if you have an order that flags on
25 the fat finger report, you make a phone call to

1 the pharmacy?

2 A. That's correct.

3 Q. Okay. You said that you would maybe look
4 at the past ordering history for a store, but I
5 would assume that a lot of times you can see the
6 orders that come in on those fat finger reports
7 and realize they're clearly in error?

8 MS. SWIFT: Object to the form,
9 characterization of the report.

10 A. So it was very infrequent that we ever
11 actually had to -- or had those items show up on
12 the report. When they did, I don't recall ever
13 actually having to call the store to see if it was
14 correct or not. That's how infrequent it would
15 have been. But, yes, we did check their order
16 history to see if it was something that was
17 regular and average for what the store goes
18 through and orders.

19 Q. Okay. Give me an example -- or give me
20 an estimate of how often you would have a
21 controlled drug flag on one of these reports.

22 MS. SWIFT: Objection. Calls for
23 speculation.

24 A. Yeah, I have no idea.

25 Q. Well, you said it happened very

1 infrequently. What do you mean by that?

2 A. I mean, it happened -- I don't recall it
3 ever actually happening. I don't recall ever
4 contacting a store to say, you know, is your C-III
5 through V item, whatever it was, you know, is that
6 a valid order.

7 Q. Do you recall a C-III through V item ever
8 flagging on this excessive order, fat finger
9 report?

10 A. I'm --

11 MS. SWIFT: Object to the
12 characterization of the report.

13 A. So I'm sure that it would have come up,
14 but I don't recall it at all. It was a long time
15 ago.

16 Q. Okay. Was this -- this process of
17 running this report and looking for these fat
18 finger errors, was that always a part of your
19 duties and responsibilities as a SAIL coordinator?

20 MS. SWIFT: Object to the form of the
21 question.

22 A. It -- for the C-III through Vs while we
23 distributed them and I was the SAIL coordinator,
24 yes. And for the -- I'm sorry, go ahead.

25 Q. No --

1 MS. SWIFT: Did you finish your answer?

2 A. No. For non-pharmacy, we have always --
3 as the SAIL coordinator, we've always run that
4 report.

5 Q. Okay. But for controlled drugs, you've
6 run that all the way back to 2008, when you became
7 the SAIL coordinator?

8 A. If that is the -- I don't remember what
9 dates we were distributing C-III through V. But
10 during my time as SAIL coordinator while we were
11 distributing, yes, we ran that report.

12 Q. And tell me if I'm wrong, but I heard you
13 tell me that you don't ever remember there being a
14 C-III through V drug that flagged on that report?

15 MS. SWIFT: Object to the form.

16 A. I don't recall it happening.

17 Q. Do you recall ever having to review a
18 store's ordering history for Schedule III through
19 V drugs to evaluate any of these orders that would
20 have flagged on a report?

21 A. I don't specifically remember reviewing
22 C-III through V. But we regularly check that for
23 all items that we process now and did then. But I
24 don't remember if it was C-III through V. I don't
25 have a specific recollection of that.

1 Q. Okay. But so you would have reviewed the
2 historical orders for bubble gum if that were to
3 pop up on one of these reports?

4 A. Yes, we would.

5 Q. And you would have looked into whether or
6 not the bubble gum order that came in on this
7 particular order that flagged on the report was
8 consistent with what that store had typically been
9 getting?

10 A. That's true.

11 Q. And if it wasn't consistent, in that
12 situation you would make a phone call to the
13 store?

14 A. That's right.

15 Q. And you would ask the store, you know,
16 you usually only get 10 units of bubble gum, but
17 here you asked for 1,000 units of bubble gum; did
18 you really want 1,000 units?

19 A. That's what we would do.

20 Q. Okay. And they would tell you, no, we
21 just want our normal 10 units of bubble gum, and
22 in that case you would do what?

23 A. We would decrease the order to the 10
24 units that they asked for, for non-pharmacy.

25 Q. You took your direction from the store on

1 what to change the order to if the order was to be
2 changed?

3 A. Yes, we did.

4 Q. You didn't contact anybody at -- in loss
5 prevention or corporate or internal audit, or
6 anything like that, and ask them for any
7 instructions or directions on what to change the
8 order to?

9 MS. SWIFT: Object to the form of the
10 question.

11 A. No, we did not.

12 Q. Whatever the store told you to do, that's
13 what you inputted for that order?

14 MS. SWIFT: Object to the form.

15 A. Yes.

16 Q. Would there ever be an occasion where the
17 store would say, no, we want -- we want 50 units
18 of bubble gum today, and you would say, well, no,
19 we're only going to give you 10? Would that ever
20 happen?

21 A. It's possible. We would base it on what
22 our current DC inventory was. We don't want to
23 short other stores just to give a bulk of the
24 product to one store. So it is possible that we
25 would give them a lesser amount than what they

1 were requesting.

2 Q. But the reason for that would be the
3 amount of inventory that you have in the
4 distribution center?

5 A. That's correct.

6 Q. Do you ever recall having one of these
7 fat finger reports flagged for a controlled
8 substance and then you reporting that to the DEA?

9 MS. SWIFT: Object to the form of the
10 question.

11 A. I never had any contact with the DEA.

12 Q. Okay. Would it even have occurred to you
13 if there had been an order that had come in for
14 1,000 bottles of a C-III drug for a store that
15 usually got 10 bottles, would it even have
16 occurred to you to contact the DEA?

17 MS. SWIFT: Object to the form. Assumes
18 facts not in evidence.

19 A. I don't know what I would have done.

20 Q. Okay. Well, your normal process would
21 have been to call the store, right?

22 A. Yes.

23 Q. And ask the store did you really want
24 these 1,000 bottles of the C-IIIs, correct?

25 MS. SWIFT: Object to form. Calls for

1 speculation.

2 A. Yes. I would have called the store to
3 see if it was a legitimate order.

4 Q. Okay. And if they told you that was a
5 fat finger error, we really only want our 10
6 bottles, you would have lowered it to 10 and sent
7 them the 10, correct?

8 A. Correct.

9 MS. SWIFT: Objection. Calls for
10 speculation.

11 Q. If -- in a similar situation, if you had
12 a store and an order for 100 bottles of
13 controlled -- a Schedule III controlled drug, and
14 it flagged on your report, and you looked, and the
15 store typically got 10 bottles, and you called the
16 store and said did you really want these 100
17 bottles or was that an error, and they told you,
18 no, we really want the 100 bottles; if you had
19 sufficient inventory within the store, was there
20 anything that would have prevented you from
21 sending that order?

22 MS. SWIFT: Objection. Calls for
23 speculation. Hypothetical.

24 A. Well, we can't see the inventory at the
25 store. Did you mean the DC?

1 Q. I'm sorry. That's exactly what I meant.

2 A. Okay.

3 MS. SWIFT: Same objections.

4 A. I still -- I don't know what I would have
5 done at the time. It did not happen that I can
6 recall, so I'm not sure what my follow-up would
7 have been.

8 Q. But there was no policy or procedure that
9 was in place to tell you to do anything other than
10 fill the order if you verified with the store that
11 the order was accurate?

12 MS. SWIFT: Objection. Calls for
13 speculation.

14 Q. Is that correct?

15 A. Since it didn't happen that I can recall,
16 I don't know if there was a policy or procedure in
17 place.

18 Q. Okay. So if you read the last sentence
19 of paragraph 2 under 3-A, it says "if the order
20 is." Do you see where I am?

21 A. Paragraph 2, under -- where are you at?

22 Q. Under "procedure."

23 A. 3-A -- so the C2 SAIL personnel working
24 query? Is that where you are?

25 Q. Correct.

1 A. Okay. I got you. I see.

2 Q. All right. I'm looking at the last --

3 A. Okay. Sorry.

4 Q. It says, "if the order is incorrect, the
5 original order for the item is deleted and rekeyed
6 correctly." Do you see that?

7 A. I see that it says that.

8 Q. Okay. And you agree that that was the
9 procedure?

10 MS. SWIFT: Object to the form.

11 A. That was Mt. Vernon's procedure,
12 according to this document. But we did not delete
13 and rekey an order. We either deleted the order,
14 or we just decreased the existing order.

15 Q. Okay. And the purpose for doing that was
16 to correct any errors and make sure that the store
17 got what they were really asking for?

18 MS. SWIFT: Objection to form.

19 A. That's correct.

20 Q. And then it looks like the next step is
21 once all orders have been reviewed for accuracy,
22 computer personnel is notified to kick off order
23 processing?

24 A. That is correct.

25 Q. So once it's been verified that the --

1 that the order is what the store was actually
2 asking for, order processing begins?

3 A. Yes.

4 Q. Is that the extent of this excessive
5 order program that you would be in charge of as
6 the SAIL coordinator?

7 MS. SWIFT: Object to the form.

8 A. Yes, it is.

9 Q. If you look under the next heading on
10 paragraph B, it says, "responsibilities of Rx team
11 member personnel, location control and sale team
12 stores picking date." Do you see that?

13 A. I do.

14 Q. And it says, "as Rx team members are
15 picking orders and an order seems questionable,
16 SAIL office will be contacted via phone for order
17 accuracy verification." Do you see that?

18 A. I see that.

19 Q. Are you familiar with what's being
20 discussed there?

21 A. I understand what they're saying, but I
22 don't recall that ever actually happening. I
23 don't know if it's part of our process.

24 Q. Okay. At any -- at any time from '08
25 when you became the SAIL coordinator until --

1 until Walgreens stop distributing C-III through
2 Vs, do you recall ever being contacted by a picker
3 asking whether or not what they were picking was
4 accurate?

5 MS. SWIFT: Objection. Calls for
6 speculation.

7 A. I don't recall that ever happening.

8 Q. If you go under paragraph C, do you see
9 it says "responsibilities of Walgreens Company"?

10 A. Yes, sir.

11 Q. And it says, "suspicious store orders and
12 inquiries are handed through the corporate office
13 internal audit department." Do you see that?

14 A. I see that.

15 Q. Prior to reading that, did you have that
16 understanding or knowledge?

17 A. No. I just know that my department never
18 did anything with suspicious orders.

19 Q. Okay. Did you know that the internal
20 audit department was -- had purview over
21 suspicious orders, according to the policy?

22 A. I did not.

23 Q. Did you ever interact with anybody at the
24 internal audit department?

25 A. No.

1 Q. How often would the internal audit
2 department come to Perrysburg while you were
3 distributing controlled drugs?

4 MS. SWIFT: Objection. Lacks foundation.

5 A. I don't know that they ever did come to
6 Perrysburg DC.

7 Q. In 2008 until Walgreens stopped
8 distributing controlled substances sometime in
9 2013, do you recall ever interacting with anybody
10 from internal audit regarding the Schedule III
11 through V controlled substances?

12 A. I don't recall when we were distributing,
13 but I don't know of any visits that they did. I
14 never interacted with any internal audit
15 department personally.

16 Q. Did they -- did you ever get any request
17 for information from anybody regarding order
18 histories, or order patterns, or order frequencies
19 that you understood to be used for evaluation of
20 suspicious orders?

21 A. I did not.

22 Q. Did anybody from the internal audit
23 department ever ask you for any information about
24 orders of controlled substances?

25 A. I didn't even know we had an internal

1 audit department, so no.

2 Q. It goes on to say in the second sentence
3 that "suspicious orders are then reported by
4 corporate to the FDA and/or DEA for controlled
5 substances within three days." Do you see that?

6 A. I do see that.

7 Q. Do you have any idea whether or not that
8 was actually happening?

9 A. I -- I don't know. I don't know what --
10 what they did with that. I have no idea.

11 Q. If you go to the next page, it says
12 "training." It says, "to establish procedures to
13 properly train, evaluate, and guide the team
14 members on the process, the SAIL function manager
15 will be responsible for the training and
16 enforcement of all these procedures." Do you see
17 that?

18 A. I see that it says that.

19 Q. Okay. Was that the case at Perrysburg?

20 A. It was a different hierarchy at
21 Perrysburg. We didn't have a SAIL function
22 manager. We had a SAIL coordinator, which was a
23 supervisor role, as opposed to a function manager
24 role. And that SAIL coordinator would have
25 reported to a different manager that was not part

1 of SAIL.

2 Q. I'm sorry, I missed the first part of
3 your answer. It was my fault, not yours.

4 So who would have been in charge of the
5 training for this policy or procedure?

6 MS. SWIFT: Object to the form.

7 A. I don't know. In 2006 I was an MPB
8 clerk. I don't know.

9 Q. This is the 2010 version.

10 A. In 2010, I -- I would have been the SAIL
11 coordinator reporting to Tammy Hensley, who was
12 the admin manager.

13 Q. Okay. Would Tammy have been in charge of
14 any training under this?

15 MS. SWIFT: Object to the form.
16 Foundation.

17 A. I don't -- I don't know.

18 Q. At any of the time while you were the
19 SAIL coordinator from 2008 through when Walgreens
20 stopped distributing controlled substances, did
21 you provide any training to anybody on these
22 procedures?

23 MS. SWIFT: Object to the form of the
24 question.

25 A. Not that I can remember.

1 Q. Other than I guess -- I think you told us
2 earlier you received some guidance from Tammy when
3 you assumed the position about running these
4 reports and these queries; is that --

5 A. That's correct.

6 Q. Okay. Other than that initial guidance
7 you received from Tammy, did you ever receive any
8 training or instructions from anybody on these
9 procedures after that?

10 MS. SWIFT: Object to the form.

11 A. Not that I recall.

12 Q. And, again, the goal of this process as
13 far as looking at those excessive orders was to
14 identify orders that had been entered in error by
15 the stores?

16 A. Correct.

17 Q. And your goal in researching those
18 reports that had flagged was to make sure that the
19 stores actually received the quantity of product
20 that they wanted to receive?

21 A. It was --

22 MS. SWIFT: Object to the form of the
23 question.

24 A. It was to make sure that the stores
25 received the product that they needed to receive.

1 Q. Okay. The product that they were
2 actually asking for?

3 MS. SWIFT: Object to the form.

4 A. Yes.

5 Q. You were not charged with doing any
6 second-guessing of how much any store should or
7 should not be receiving if you went through your
8 processes, called the store, and they confirmed
9 that the order entered was actually what they
10 wanted?

11 MS. SWIFT: Object to the form.

12 Q. Is that correct?

13 A. That's correct.

14 Q. I'll show you what I'll mark as Exhibit
15 Number 11.

16 - - - - -

17 (Thereupon, Deposition Exhibit
18 Walgreens-Diebert 11, Authentication
19 of Prescription Order Policy
20 WAGMDL00749831 - 00749407, was
21 marked for purposes of
22 identification.)

23 - - - - -

24 Q. And if you'll keep that one right next to
25 you, I'm going to do a compare and contrast with

1 this. This is P-WAG-210.

2 And if you look at the top of the page,
3 it looks like there's a different subject. And,
4 again, I'm comparing Exhibits 11 and 10. So it
5 looks like the subject, instead of being "Rx
6 questionable order quantity" is now
7 "authentication of prescription order policy." Do
8 you see that?

9 A. I do.

10 Q. But the date of the original is the same,
11 but the revision date is different, correct?

12 A. I see that.

13 Q. Okay. So you see this is an October of
14 2013 policy, correct?

15 A. Yes.

16 Q. And you would agree with me that this
17 October 2013 -- this date of October 2013, do you
18 have an understanding that that is after Walgreens
19 stopped distributing from Perrysburg -- excuse
20 me -- stopped distributing controlled substances
21 from Perrysburg?

22 MS. SWIFT: Objection. Foundation.

23 A. I don't know what date we stopped
24 distributing.

25 Q. Do you recall the DEA coming into the

1 Perrysburg distribution center?

2 MS. SWIFT: Object to the form. Vague.

3 A. I know that the DEA came in. I don't
4 remember the date, and I didn't have any part of
5 their visit when they were there.

6 Q. When the DEA came into the Perrysburg
7 distribution center in 2013, do you recall
8 approximately how long after that it was that
9 Perrysburg stopped distributing controlled
10 substances?

11 MS. SWIFT: Object to the form. Assumes
12 facts. Foundation.

13 A. I don't know when they came in, and I
14 don't have any idea how long a time there was
15 between their visit and when we may or may not
16 have stopped distributing drugs, controlled drugs.

17 Q. Is there any event that you would
18 correlate with Perrysburg stopping to distribute
19 controlled substances?

20 MS. SWIFT: Object to the form. Vague.

21 A. I don't know.

22 Q. Okay. All right. Let's look at these
23 two. So if you look at Exhibit 11, which is the
24 2013 version, it looks like the purpose is the
25 same in both policies, correct, 2010 and 2013?

1 A. Yes. Yes.

2 Q. So it's the 2013 version, but the policy
3 is aimed at accomplishing the same purpose,
4 correct?

5 A. Yes.

6 Q. And it looks like the scope of the
7 procedure is the same -- excuse me -- the scope of
8 the policy is the same?

9 A. Yes.

10 Q. And it even looks like the procedure is
11 identical?

12 MS. SWIFT: Objection to the extent it
13 mischaracterizes the document.

14 A. It looks similar.

15 Q. Do you see any differences?

16 A. It looks like there may be differences
17 under the "C" heading for responsibilities.

18 Q. Exactly. I'm just under -- sorry. I
19 should have been more specific. I'm just under
20 paragraph A.

21 A. No. I don't see any noticeable
22 differences.

23 Q. Okay. And the same thing with paragraph
24 B, it looks to be identical?

25 A. Yes, it does.

1 Q. So -- and you jumped ahead of me.

2 A. Sorry.

3 Q. So where we see the differences is in
4 paragraph C, correct?

5 A. Yes.

6 Q. Okay. It says -- in the 2013 version of
7 this policy, it says, "the Walgreens strategic
8 inventory management system." Do you know what's
9 being referred to there?

10 A. No.

11 Q. Are you familiar with SIMS?

12 A. Oh, yes. Sorry. I guess I do know.

13 Q. Okay. What is SIMS?

14 A. SIMS is a system that we use at the
15 distribution center.

16 Q. What is it used for?

17 A. For processing orders and keeping track
18 of our inventory.

19 Q. Okay. It says, "SIMS will stop what
20 would be considered suspicious controlled drug
21 orders from being released for picking at the DC
22 based on the algorithm that looks at pass/fails
23 and order frequency." Do you see that?

24 A. I see that.

25 Q. It says, "if we suspect the store to be

1 suspicious, the order will be canceled and then
2 reported to the FDA, the Board of Pharmacy, and
3 the DEA for controlled substances within three
4 business days." Do you see that?

5 A. I see that.

6 Q. Do you recall -- is that -- as we just
7 read that, is that new information to you today --

8 A. Yes.

9 Q. -- that this was the policy?

10 A. Yes. I didn't -- I didn't know that.

11 Q. Did you have any understanding that in
12 2013 there was a policy implemented that would --
13 that would -- that would stop suspicious orders
14 from being released for picking at the
15 distribution center?

16 MS. SWIFT: Object to the form. Vague.

17 A. No. I did not have knowledge of that.

18 Q. And you certainly didn't have any
19 understanding or any appreciation of orders being
20 reported to Boards of Pharmacy or DEA, or anything
21 like that; is that correct?

22 A. That's correct. I did not have that.

23 Q. I've asked you a lot of questions about
24 reporting to the DEA, or dealing with the DEA, but
25 I didn't ask you anything with the Board of

1 Pharmacy. Do you ever deal with the Board of
2 Pharmacy in any way?

3 A. I have not, no.

4 Q. If you'd flip to the Bates number ending
5 394, and do you see at the top of the page here it
6 says "Mt. Vernon stores," it's got a DC, and then
7 it says "order error processed;" do you see that?

8 A. I do.

9 Q. Okay. And it says, "once it's been
10 confirmed that the adjusted transmissions"
11 across -- "are across the SAIL or the computer
12 room, TM" -- does that mean team member?

13 A. Yes, it does.

14 Q. "Will start reviewing store's Rx
15 transmissions and see if there are any Rx items
16 that have been ordered greater than 16 units of
17 one" -- and wick is an item?

18 A. Yes.

19 Q. "Greater than 16 units of one item by one
20 store."

21 So is this kind of consistent with the
22 excessive order report, or the fat finger type
23 report that we talked about earlier?

24 MS. SWIFT: Object to the form. Vague.

25 A. I've never seen this form before.

1 Q. Okay. Do you see the transmission in the
2 middle of the page where it looks like something's
3 been copied and pasted?

4 A. Yes.

5 Q. Where it says "transmission query
6 report"?

7 A. Yes.

8 Q. Okay. Are you saying this is not a
9 format that you're familiar with?

10 A. Yeah, I've not seen that before.

11 Q. Okay. Well, let me explain to you how I
12 think I'm reading it, and you tell me if I'm right
13 or wrong, or if you don't know. But it looks like
14 in the left-hand column there's an item number and
15 an item description listed?

16 A. Yes.

17 Q. And then it looks like there's a -- maybe
18 a destination, a store number where it's supposed
19 to be sent to, and there's an entry for the number
20 of SKUs or units that were ordered; do you see
21 that?

22 A. Yes.

23 Q. And it looks like in this -- in the first
24 entry, it looks like there was -- there were 30
25 units ordered, that is circled and struck through,

1 and the number "3" is written checked there next
2 to it; do you see that?

3 A. I do.

4 Q. Okay. And that would be consistent with
5 this process that we're -- that we saw on this
6 page, where 16 was their trigger amount, and if
7 there were orders over 16, that they would call
8 the pharmacy to see whether or not they really
9 wanted that number of units?

10 A. Yes.

11 MS. SWIFT: Objection.

12 Q. Is that fair?

13 MS. SWIFT: Foundation.

14 A. Yes, it is.

15 Q. And is this the type of process, even if
16 it wasn't this exact form or format, but that's
17 the type of process that you were telling us about
18 earlier with this excessive order report where you
19 would be looking for these errors from the stores,
20 correct?

21 A. Yes. It is very similar to that.

22 Q. And if you look at the next submission
23 down where you see two different item
24 descriptions; do you see where I am?

25 A. I do.

1 Q. And it looks like in those two situations
2 there was a store that ordered 300 units of a
3 product, and 400 units of a product, and in each
4 of those situations they actually only meant to
5 order 3 units or 4 units; is that fair?

6 A. Yes.

7 MS. SWIFT: Object to the form.
8 Foundation.

9 Q. And, again, those are the types of errors
10 that you were looking for when you reviewed these
11 types of reports?

12 A. That's correct.

13 Q. If you'd turn with me, please, to Bates
14 number ending 383. And do you see at the top of
15 this page, it says "suspicious order monitoring
16 program policy and procedures for the
17 pharmaceutical integrity team." Do you see that?

18 A. Yes.

19 Q. Do you know if you've ever seen this
20 document before?

21 A. I don't believe I have.

22 Q. Do you know who the -- what the
23 pharmaceutical integrity team is?

24 A. Yes. They're a group out of corporate
25 that deals with the pharmacy items. That's about

1 all I know.

2 Q. Okay. Without going through and reading
3 this document, do you know what Walgreens'
4 suspicious order monitoring program is?

5 A. No.

6 Q. What could -- what, if anything, could
7 you tell me about it?

8 MS. SWIFT: Object to the form.

9 A. I don't know.

10 Q. If I was to ask you what Walgreens does
11 to identify suspicious orders, what would you tell
12 me?

13 A. I can only tell you what we do for the
14 large orders, that we check on the queries every
15 day. I couldn't tell you beyond that. I don't
16 know.

17 Q. Where you're looking for fat finger
18 errors?

19 A. Yeah.

20 Q. Okay. But beyond that, you don't know
21 anything --

22 A. I don't --

23 Q. -- about the suspicious order monitoring?

24 MS. SWIFT: Object to the form. Vague.

25 A. Yes. I don't -- I don't know what

1 Walgreens does for suspicious orders.

2 Q. Okay. Let's look at just a little bit of
3 this -- of this -- of this policy.

4 Do you see right underneath the heading,
5 it says, "this policy and specific procedures
6 govern how controlled substance orders are
7 processed and what steps are taken by the
8 pharmaceutical integrity team to investigate
9 orders of interest in the controlled substance
10 order monitoring system." Do you see that?

11 A. I see that.

12 Q. Over -- under "overview," it says, "the
13 Walgreens distribution centers must take
14 reasonable measures to identify its customers and
15 understand the normal and expected transactions
16 conducted by those customers" in identifying --
17 excuse me -- "and identify transactions involving
18 controlled substances that are suspicious in
19 nature." Do you see that?

20 A. I see that it says that.

21 Q. Okay. Do you know who at the
22 distribution center, if anybody, has that role?

23 A. I don't know who would have that role.

24 Q. Do you see here that this policy says
25 that it's the responsibility of the distribution

1 centers, correct?

2 A. I do see that.

3 Q. Okay. And you currently are the C2
4 manager at the Walgreens distribution center,
5 correct?

6 A. I am.

7 Q. Okay. Who else -- is there anybody
8 higher than you that has the responsibilities and
9 duties for C-IIs --

10 MS. SWIFT: Object to the form of the
11 question.

12 Q. -- at the distribution center?

13 MS. SWIFT: Object to the form. Vague.

14 A. For -- there's no one other than myself
15 that is responsible for signing the processed C-II
16 orders. Beyond that, I don't know who else would
17 have any other responsibilities pertaining to
18 C-IIs.

19 Q. Okay. But you as the C2 manager at the
20 Perrysburg distribution center, you don't know --
21 well, first of all, you don't do anything to
22 identify customers, understand normal and expected
23 transactions, or identify transactions that are
24 suspicious?

25 A. No. We don't do that.

1 Q. Do you know of anybody at the Perrysburg
2 distribution center that does that?

3 A. I don't know who does that.

4 Q. Do you know whether or not anybody does
5 that?

6 A. I -- I don't know who does that for the
7 DC or, you know, if Rx Integrity does that. I
8 don't know who's responsible for it.

9 Q. Okay. Well, when you say you don't know
10 who does it, that implies that somebody does. So
11 my question is; do you know whether or not anybody
12 at the distribution center does that?

13 MS. SWIFT: Objection. Asked and
14 answered.

15 A. I don't know who at the DC would do that,
16 if they do.

17 Q. Okay. So you don't know whether or not
18 that even happens in the distribution centers,
19 correct?

20 MS. SWIFT: Objection. Asked and
21 answered.

22 A. As a role of the SAIL coordinator, it's
23 not part of my responsibility, so I would have no
24 reason to know -- excuse me -- know who does that.
25 Excuse me.

1 Q. Well, you're the C2 manager at
2 Perrysburg, correct?

3 A. I am.

4 Q. Do you know whether or not there is
5 anybody at the distribution center that has these
6 responsibilities that are listed here, to identify
7 customers, understand normal and expected
8 transactions, and identify transactions that are
9 suspicious?

10 MS. SWIFT: Object to the form of the
11 question. Asked and answered.

12 A. I don't know if there's anybody at the
13 distribution center that does that.

14 Q. Thank you.

15 It goes on to say, "for the purpose of
16 this document, a DC customer is an individual
17 Walgreens pharmacy." Do you see that?

18 A. Yes.

19 Q. It says, "orders must be assessed to
20 ensure that quantities of controlled substances
21 ordered by a specific location are reasonable. In
22 making these assessments, the distribution center
23 may consider the pharmacy's clinical business
24 needs, location, and population served." Do you
25 see that?

1 A. I see that.

2 Q. In your role as the C2 manager at the
3 Perrysburg distribution center, do you do any
4 analysis or evaluation of any particular store's
5 clinical business needs, location, and population
6 served?

7 A. I do not.

8 Q. Do you know of anybody at the Perrysburg
9 distribution center that does?

10 A. I don't know if there's anybody that
11 does.

12 Q. Then it goes on to say, "Walgreens must
13 report to the DEA any orders that is determined to
14 be suspicious," correct?

15 A. It says that, yes.

16 Q. And that's certainly not any of your
17 responsibilities, right?

18 A. It is not.

19 Q. And you don't know of anybody at the
20 distribution center that does that, correct?

21 A. I don't know if there's anybody that does
22 it at the DC.

23 Q. Okay. This document goes on to talk
24 about ceiling limits and tolerance limits that are
25 implemented for Walgreens pharmacies. Do you know

1 what that means?

2 A. Very little. I know that there's a limit
3 to the amount of items that the pharmacies can
4 order. And that's about the extent of it.

5 Q. Okay. In your role, do you do any
6 evaluation or analysis of any ceiling or threshold
7 that is set?

8 A. No, I do not.

9 Q. Do you have any role in setting those
10 ceilings or thresholds?

11 A. I'm sorry?

12 Q. Do you have any involvement in setting
13 those ceilings or thresholds?

14 A. No, I don't.

15 Q. Do you have any involvement in
16 determining whether or not those ceilings or
17 thresholds should be raised or lowered?

18 A. No, I don't.

19 Q. Do you know whether or not there's a
20 process for raising or lowering a ceiling or
21 threshold?

22 A. I don't know that.

23 Q. I'll represent to you that there is a
24 clause in here that talks about the option that a
25 pharmacy be contacted as they approach the ceiling

1 or threshold. Is that anything that falls within
2 your responsibilities or duties?

3 A. No.

4 MS. SWIFT: Object to the form of the
5 question.

6 A. No.

7 Q. Have you ever contacted a pharmacy or a
8 store to tell them that they were approaching an
9 order threshold or a ceiling as it related to
10 controlled substances?

11 A. I don't receive that information, so I
12 would have no reason to contact a store about
13 their threshold limits for C-IIIs.

14 Q. So, no, you have not?

15 A. No, I have not.

16 Q. Turn with me, please, to the Bates number
17 ending 395. And do you see that this is --
18 contains the policy and procedure for List 1
19 chemicals?

20 A. Yes.

21 Q. And do you agree with me that List 1
22 chemicals are different than controlled
23 substances?

24 MS. SWIFT: Objection. Foundation.

25 A. They are different, but I don't know what

1 the differences are.

2 Q. Okay. Do you have an appreciation that
3 there are different rules and regulations for List
4 1 chemicals than there are for controlled
5 substances, or you just don't know?

6 A. I don't know.

7 Q. Have you ever been given any training or
8 education on the differences between rules and
9 regulations for controlled substances versus rules
10 and regulations for List 1 chemicals?

11 MS. SWIFT: Objection to form.

12 A. Not that I'm aware of.

13 Q. Who is Matthew Nye?

14 A. He's our computer room function manager.

15 Q. And I'm asking about the time period in
16 which Walgreens was distributing controlled
17 substances. Would those controlled substances
18 have fallen under his purview?

19 MS. SWIFT: Object to the form. Vague.

20 A. So on Sundays when the computer room
21 processed, it would have for C-III through Vs. I
22 don't know if they ever had anything to do with
23 C-IIIs.

24 Q. Okay. I'll show you what I've marked as
25 Exhibit Number 12.

1 - - - - -

2 (Thereupon, Deposition Exhibit
3 Walgreens-Diebert 12, E-mail Chain
4 WAGMDL00751808 - 00751810, was
5 marked for purposes of
6 identification.)

7 - - - - -

8 Q. And if you look at the top of this, you
9 see this is an e-mail chain?

10 A. Yes.

11 Q. And it looks like the top e-mail is from
12 Deb Bish, correct?

13 A. Yes.

14 Q. And if you look down to the "to" line, it
15 looks like you're included; do you see that?

16 A. Yes. Yes.

17 Q. And this e-mail is from May 29, 2012?

18 A. Yes.

19 Q. And during this period of time, you would
20 have been the SAIL coordinator in charge of C-III
21 through V drugs, correct?

22 A. I don't recall when we stopped
23 distributing. If we were distributing at that
24 time, I would have been the SAIL coordinator.

25 Q. Okay. And if you flip through the -- to

1 the second page, and I can't really ask you about
2 the entire chain, because a lot of it is hidden
3 from me. But you see the first e-mail that we can
4 actually look at is an e-mail from Steve, and --
5 who was the distribution center manager?

6 A. Yes.

7 Q. Okay. And it looks like he sends that
8 e-mail -- first off, it looks like it goes to
9 Matt, you, and Tammy Trumbull, correct?

10 A. Correct.

11 Q. And then it also looks like there's a
12 list serve that it goes to. Do you understand
13 what I'm saying there?

14 A. Yes.

15 Q. Okay. Do you recognize who that's going
16 to?

17 A. Yes.

18 Q. Can you explain that for me?

19 A. Are you talking about the group e-mail?

20 Q. Yes.

21 A. That would have been his -- Steve
22 himself, as the DCM; Justin Joseph, as the
23 manager -- outbound manager, and then the IOs at
24 the time. I couldn't tell you who the IOs were.
25 They've changed over the years.

1 Q. What's "IO" mean?

2 A. Inbound/outbound manager.

3 Q. Okay. So that's a group e-mail that
4 would go to all the people with those --

5 A. The senior managers.

6 Q. Okay. Is there a group e-mail account
7 within the distribution center that you would be
8 included on?

9 A. There are a couple. I would be included
10 on the Perrysburg SAIL coordinators e-mail.

11 Q. Okay.

12 A. And C2 -- Perrysburg C2 orders e-mail
13 group, I believe. That's the signers group
14 e-mail.

15 Q. Perrysburg C2 orders?

16 A. I believe that's the name of it.

17 Q. Okay. What else?

18 A. That may be it.

19 Q. Okay. Would you have been on the
20 Perrysburg SAIL going back to 2008?

21 MS. SWIFT: Object to the form.

22 A. When I became SAIL coordinator, I would
23 have been put on that, yes.

24 Q. And the Perrysburg C2 would have
25 started --

1 A. In late 2014, when I became the process
2 manager.

3 Q. So, anyway, we see this e-mail from
4 Steve. The subject is the suspicious drug
5 process; do you see that?

6 A. Yes.

7 Q. And then if we go to this next e-mail
8 from Matt on the bottom of the first page, it
9 looks like he's going to -- we'll look at this,
10 and we'll read through it -- but it looks like
11 he's going to talk a little bit about some of this
12 excessive order reports that you run.

13 He says, "I have some questions." He
14 says, "excessive to us for C-II is any item over
15 100 units." Do you see that?

16 A. I see that.

17 Q. And so that would mean 100 bottles,
18 correct?

19 A. Correct.

20 Q. He then asks, "is this acceptable?" Do
21 you see that?

22 A. Yes.

23 Q. He says, "do we need to change the
24 threshold in which we call for C-II overages." Do
25 you see that?

1 A. Yes.

2 Q. Looking at this e-mail from Matt in May
3 of 2012, does it jog your memory that when you
4 were running the excessive reports, or the fat
5 finger reports for this Schedule III through Vs,
6 that 100 units was your trigger?

7 MS. SWIFT: Object to the form.

8 A. I don't recall. I don't know what the
9 limit was.

10 Q. Well, do you see here that in May of 2012
11 Matt's indicating that 100 units was what the
12 trigger was for Schedule II drugs, correct?

13 A. I see that, yeah.

14 Q. And to be fair to you, you weren't doing
15 C-IIs at this time, right?

16 A. That is correct.

17 Q. Matt goes on to say, "if we go much
18 lower, we're going to need significantly more time
19 to run C-II because calling each store takes about
20 five minutes." Do you see that?

21 A. Yes.

22 Q. It says, "oftentimes no one at the
23 pharmacy can make the decision to change the
24 order. Do we just leave it and e-mail Linda for
25 being suspicious, or make it 100 SKUs and log it?"

1 Do you see that?

2 A. Yes.

3 Q. Do you know what that means?

4 MS. SWIFT: Objection. Calls for
5 speculation.

6 A. I understand that in there he's asking if
7 he should leave it alone or if he should not. But
8 that's the extent. I don't know who Linda is, and
9 I don't know what logs they would have used.

10 Q. Okay. It says, "currently we drop it
11 down to 100 units if we can't get a real answer
12 from anyone." Do you see that?

13 A. Yes.

14 Q. Does it surprise you that 100 units was
15 the trigger for Control-II drugs?

16 MS. SWIFT: Objection. Calls for
17 speculation.

18 A. Yeah, I wouldn't know what they would
19 have thought usual for a threshold.

20 Q. We just looked at these two earlier
21 reports, and one talked about the Rx order
22 thresholds should be 24, and then we looked at
23 another page that said the units -- the threshold
24 should be 16, and now we look at this document
25 that they actually practice in the Perrysburg

1 distribution center for C-IIs was 100 units. Does
2 that -- is that surprising to you at all?

3 MS. SWIFT: Object to the form. Asked
4 and answered.

5 A. I -- I don't know if it would be
6 surprising or not. None of those processes was I
7 involved in, so I don't know what standards should
8 have been used or would have been used.

9 Q. Do you recall if 100 units was consistent
10 with what you used in the C-III to V department?

11 MS. SWIFT: Objection. Asked and
12 answered.

13 A. I don't recall.

14 Q. Now, as far as what you were doing in the
15 distribution center to look out for anything out
16 of the ordinary, we've covered the excessive order
17 issue, we talked about the pickers, but I think
18 you said you don't ever remember the pickers
19 contacting you about anything questionable. Is
20 there any other reports or programs or processes
21 that you went through as the SAIL coordinator for
22 Schedule III to V drugs that would have been
23 consistent with monitoring or evaluating order
24 sizes?

25 MS. SWIFT: Objection to form. Compound.

1 Vague.

2 A. I don't recall any other processes that
3 we would have done in regards to C-III through V
4 distribution while I was the SAIL coordinator.

5 Q. Are you aware that in early 2012 the DEA
6 began to investigate the Jupiter distribution
7 center?

8 A. I am not aware of that.

9 Q. Are you aware that Walgreens paid a
10 settlement to settle allegations from the DEA that
11 Walgreens at the Jupiter distribution center had
12 violated the Controlled Substance Act?

13 A. I'm not aware of any settlement that
14 Walgreens would have had.

15 Q. Prior to me just representing to you in a
16 question that Walgreens had paid a settlement to
17 the DEA, did you know that that had ever happened?

18 A. I did not know that, no.

19 Q. I'll show you what I'll mark as Exhibit
20 13.

21 - - - - -

22 (Thereupon, Deposition Exhibit
23 Walgreens-Diebert 13, Settlement
24 Memorandum of Agreement P-WAG-0001,
25 was marked for purposes of

1 identification.)

2 - - - - -

3 Q. This is P-WAG-1.

4 Now, I think you told me earlier that you
5 are aware that the Jupiter distribution center in
6 Florida was another Walgreens distribution center
7 that distributed Schedule II drugs, correct?

8 A. Yes. Yes. That's correct.

9 Q. And at no time while you were at
10 Walgreens do you ever recall being told that the
11 DEA had investigated them, that the DEA had shut
12 them down, that the DEA had padlocked their
13 controlled substances; any of the above?

14 MS. SWIFT: Object to the form.
15 Compound.

16 A. I was never informed of it. I don't even
17 remember what position I was in at the time, and I
18 wouldn't have had any need to know that
19 information.

20 Q. Okay. Regardless of whether or not you
21 had any need to know that information, nobody ever
22 told you; is that fair?

23 MS. SWIFT: Object to the form.

24 A. I was not aware of when it happened or
25 what happened.

1 Q. Okay. If you look at the top of the
2 first page, do you see it says "Settlement
3 Memorandum of Agreement"?

4 A. I do.

5 Q. Do you see it says this agreement is
6 entered into between DOJ, DEA, and Walgreens?

7 A. I see that.

8 Q. And just to kind of put this in some
9 context, if you look at the very bottom of the
10 page, do you see it's 1 of 349?

11 A. Uh-huh.

12 Q. That's the numbering system I'm going to
13 use as far as kind of steering you through this
14 document.

15 If you turn to page 11 of 349, do you see
16 that at the top of the page this is signed by a
17 Mr. Sabatino with Walgreens?

18 A. I do.

19 Q. And do you know Mr. Sabatino?

20 A. No, I do not.

21 Q. And you see that this was signed in June
22 of 2013, correct?

23 A. Yes.

24 Q. So if we go back to the first page, and
25 go down with me, please, to paragraph 5. Are you

1 with me?

2 A. I'm there. Yes, I am.

3 Q. Do you see it says, "on September 13,
4 2012, the DEA by its administrator, Michelle
5 Leonhart, issued an order to show cause and
6 immediate suspension of registration to Walgreens
7 Jupiter," and it says, "see Appendix B." Do you
8 see that?

9 A. I see that.

10 Q. Let's turn and look at that. That's
11 going to be on page 27. Do you see there it says
12 "Appendix B"?

13 A. Yes, sir.

14 Q. Okay. So if we turn one more page to
15 page 28, do you see in the top middle of the page,
16 or I guess about in the middle of the page, it
17 says "order to show cause and immediate suspension
18 of registration"?

19 A. I do.

20 Q. And the date of that above there is
21 September 13, 2012?

22 A. Yes.

23 Q. And to the left, it says "in the matter
24 of Walgreens Corporation." Do you see that?

25 A. Yes.

1 Q. And it has the Jupiter Florida address,
2 correct?

3 A. Yes.

4 Q. And at the top of the page, you see this
5 has -- it's on the DEA Department of Justice
6 letterhead?

7 A. Yes.

8 Q. And in -- I think we've agreed throughout
9 the course of the day that Perrysburg stopped
10 distributing controlled substances in 2013; is
11 that fair?

12 MS. SWIFT: Objection. Mischaracterizes
13 the testimony.

14 A. I don't remember when we stopped
15 distributing C-IIs.

16 Q. Do you remember if it was before or after
17 that time when the DEA came into Perrysburg?

18 A. I don't remember.

19 Q. Okay. Well, regardless, this is
20 September 13, 2012, correct?

21 A. Yes.

22 Q. And do you see in the second paragraph
23 there, it says, "notice is hereby given to inform
24 Walgreens Corporation," and it says Walgreens to
25 be referred to as either Walgreens or Respondent,

1 it says, "of the immediate suspension of DEA
2 certificate of registration," and it gives a
3 number, "pursuant to 21 USC 824D, because such
4 registration constitutes an imminent danger to
5 public health and safety." Do you see that?

6 A. I see that it says that.

7 Q. At any time while you were with
8 Walgreens, and specifically in the distribution
9 center dealing with Schedule III to V narcotics,
10 did anybody tell you that another one of
11 Walgreens' distribution centers was alleged by the
12 DEA to be operating in a fashion that constituted
13 an imminent danger to the public health and
14 safety?

15 A. No.

16 Q. If you go down to the paragraph number 1,
17 it says, "Walgreens' Jupiter, Florida distribution
18 center is registered with DEA as a distributor in
19 Schedules II through V." Do you see that?

20 A. I do.

21 Q. And that's consistent with your
22 understanding that Jupiter could also distribute
23 Schedule II drugs, correct?

24 A. Yes.

25 Q. If -- if you go to paragraph 2, it says,

1 "since at least 2009, the State of Florida has
2 been the epicenter of a notorious, well-documented
3 epidemic of prescription drug abuse." Do you see
4 that?

5 A. I see that.

6 Q. When this came out in September of 2012,
7 did you have that understanding?

8 A. No, I did not.

9 Q. Now, as you sit here today, do you have
10 an appreciation that the country is in the midst
11 of an opioid epidemic?

12 A. I understand that the country is -- our
13 opioids use has gone up, and nationwide.

14 Q. Well, do you also have an understanding
15 that -- that it's not referred to as an opioid
16 epidemic just because use has gone up; it's
17 referred to as an epidemic because of the impacts
18 it's having on people, correct?

19 MS. SWIFT: Object to the form of the
20 question.

21 A. I don't know. I -- people will refer to
22 it different ways.

23 Q. Okay. Do you have an appreciation that
24 we're in the midst of an opioid epidemic?

25 MS. SWIFT: Object to the form. Vague.

1 A. Opioid use is, according to the media,
2 increased. I don't know where it is, you know,
3 concentrated at.

4 Q. Okay. Let's look at P-GEN-61.

5 - - - - -

6 (Thereupon, Deposition Exhibit
7 Walgreens-Diebert 14, Center For
8 Disease Control Maps P-GEN-0061, was
9 marked for purposes of
10 identification.)

11 - - - - -

12 Q. I'll mark this as Exhibit Number 14.

13 Are you familiar with the CDC? You've
14 heard of the Center For Disease Control?

15 A. Yes.

16 Q. And if you look here, and I'll represent
17 to you what we're looking at here is a series of
18 maps, and if you look down at the bottom of the
19 first page, you'll see the source for these maps
20 is the Center For Disease Control; do you see
21 that?

22 A. I do.

23 Q. And if you go down for the citation,
24 you'll see that this is discussed -- excuse me --
25 under the source, you see that it's mortality

1 data, correct?

2 A. Yes.

3 Q. Do you know what mortality means?

4 A. Yes, I do.

5 Q. What does that mean?

6 A. That means death.

7 Q. Okay. And if you look under the
8 suggested citation, do you see this comes from
9 drug poisoning mortality; do you see that?

10 A. I do.

11 Q. Okay. So do you understand that this map
12 to be, and this first one that we're looking at
13 here has a date of 1999 on it, correct?

14 A. Yes.

15 Q. And to the right of the map, do you see
16 that there's a color-coded scale?

17 A. Yes.

18 Q. And do you recognize this to be a map
19 that is color-coded illustrating the rate of
20 deaths from drug overdoses across the United
21 States?

22 MS. SWIFT: Objection. Lacks foundation.

23 A. I see that it is color-coordinated for
24 the amount of deaths per 1,000 in the US.

25 Q. Okay. If you -- if you look at the map,

1 you would agree with my characterization that here
2 in 1999 there's a lot of blue on the map?

3 A. Yes.

4 Q. Okay. And if you look at the rates of
5 death, on the right-hand side the code, blue is
6 actually a better thing, correct?

7 A. Yes.

8 Q. That means less people are dying,
9 correct?

10 A. Correct. Yes.

11 Q. Okay. And flip through with me to the
12 next page. Do you see there that what we see is
13 the map from -- go from 1999 to 2000; do you see
14 that?

15 A. Yes.

16 Q. Okay. And flip with me up to 2003. And
17 this would be the state of the map as far as these
18 statistics go from CDC when you began at
19 Walgreens; is that fair?

20 MS. SWIFT: Object to the form.
21 Foundation.

22 A. So, I'm sorry, say it one more time.
23 What was your question?

24 Q. You started at Walgreens in 2003,
25 correct?

1 A. That's -- yes.

2 Q. Okay. So this would be the map from 2003
3 that -- illustrating statistics that we have from
4 the Center For Disease Control?

5 MS. SWIFT: Objection. Foundation.

6 Q. Do you see that?

7 MS. SWIFT: Foundation.

8 A. From when I started at the DC, this is
9 indicative of that map, from what it shows.

10 Q. Okay. And I think that you said from
11 2003 until 2008 you were in the MPB role, correct?

12 A. That's correct.

13 Q. Okay. And your primary job there was to
14 make sure that the orders were picked correctly,
15 and that they -- the truck drivers got the
16 paperwork that they needed, correct?

17 A. Correct. Yes.

18 Q. And then it was in 2008 that you took
19 over as the SAIL coordinator where you had a
20 responsibility for Schedule III through V drugs,
21 correct?

22 A. If we were still distributing at the
23 time. I don't remember if we were, what dates we
24 were distributing that.

25 Q. And as you flip from the map from 2003 to

1 2004, do you notice that the map starts to
2 lighten?

3 A. Yes.

4 Q. And what does that indicate as far as the
5 number of drug overdose deaths?

6 MS. SWIFT: Objection. Lacks foundation.

7 A. According to the graph, that the death
8 rate is going up.

9 Q. When you then look at 2005, do you see
10 again that the map continues to lighten?

11 A. Yes.

12 Q. When you flip to 2006, do you see that
13 the map continues to lighten?

14 A. Yes.

15 Q. And, again, that indicates that according
16 to these statistics, more people are dying from
17 drug overdoses, correct?

18 A. According to these rates, yes.

19 Q. Okay. And here, as we get into 2006, we
20 are actually starting to see a collection of red
21 in the right side of the country. Do you see that
22 little cluster of red?

23 A. I do.

24 Q. And from looking at this, do you have an
25 understanding of generally where that is in the

1 country?

2 A. I believe so. Yes.

3 Q. Where would that be?

4 A. It looks like maybe Kentucky, West
5 Virginia area, possibly. Tennessee.

6 Q. Okay. And so this area of the country
7 that includes West Virginia, Kentucky, Tennessee,
8 and then Ohio would be just north of that,
9 correct?

10 A. Yes.

11 Q. Okay. And if you go to the next month in
12 2007, do you see that generally the map continues
13 to lighten, that that red cluster continues to
14 grow?

15 A. It looks about the same to me.

16 Q. Okay. Let's go to 2008, when you become
17 the SAIL coordinator at the Walgreens distribution
18 center.

19 Do you see that we continue to see the
20 cluster of red areas within that area of states
21 that you talked about a minute ago?

22 A. Yes.

23 Q. Okay. And red areas are -- according to
24 this graph, that would be bad, correct?

25 MS. SWIFT: Object to the form.

1 A. That means higher mortality rates.

2 Q. That means more people are dying from
3 drug overdoses, correct?

4 MS. SWIFT: Object to the form.
5 Foundation.

6 A. According to this form, yes.

7 Q. Okay. And if you would just flip through
8 for me from 2009 to 2010, 2011 to 2012, to 2013,
9 2014, would you agree with me that as we flip
10 through the maps and the years as they progressed
11 that there was less and less blue and more and
12 more red?

13 A. Yes.

14 Q. If you would look at -- just look at the
15 2014 map, and compare it, if you would, to the
16 2008 map, when you started as the SAIL coordinator
17 with purview over Schedule III to V drugs, do you
18 see a difference between the two maps?

19 A. I do.

20 Q. What's the difference?

21 A. That according to the map, the chart, the
22 mortality rate has gone up significantly in some
23 areas.

24 Q. So from 2008 all the way through 2014,
25 you agree with me that the drug mortality rate

1 across the country has greatly increased?

2 MS. SWIFT: Object to the form.

3 Foundation.

4 A. Yes. According to the map, yes.

5 Q. And one area in particular that the
6 overdose death rate has increased is in this same
7 area, in the Appalachia area of southern Ohio,
8 West Virginia, Kentucky, and Tennessee?

9 MS. SWIFT: Object to the form.

10 Foundation.

11 Q. Correct?

12 A. I see the increase in the west coast as
13 well, drastically.

14 Q. There's increases all over the country,
15 aren't there?

16 A. Right. But I wouldn't state myself
17 looking at this graph that it's concentrated just
18 in that area.

19 Q. There's certainly a concentration there?

20 A. There is a concentration there.

21 Q. And there's certainly concentrations in
22 other places?

23 A. Yes.

24 Q. When you look at the rise of mortality
25 from drug overdoses from 2008 to 2014, do you

1 understand why people would say that we're in the
2 midst of an opioid crisis, or an opioid epidemic?

3 MS. SWIFT: Object to the form.

4 A. Yes.

5 Q. And why do you think people would say
6 that?

7 A. Because of the increase in mortality
8 rate.

9 Q. Do you understand that the drugs that
10 are -- or that a type of drug that is being used
11 and abused at a high level are opioids --

12 MS. SWIFT: Object --

13 Q. -- correct?

14 MS. SWIFT: -- object to the form.
15 Foundation.

16 A. I know that the media says that. I don't
17 have any personal knowledge of that.

18 Q. Would you consider the DEA to be a
19 reliable source on which drugs are abused or
20 misused?

21 MS. SWIFT: Objection. Foundation.

22 A. I don't know.

23 Q. Let me show you what I will mark as
24 Exhibit Number 15.

25 - - - - -

1 (Thereupon, Deposition Exhibit
2 Walgreens-Diebert 15, Drug Fact
3 Sheet Hydrocodone P-GEN-0086, was
4 marked for purposes of
5 identification.)

6 - - - - -

7 MS. SWIFT: Before we start the next
8 exhibit, I just noticed it's, like, 12:30. How
9 long have we been on the record?

10 THE VIDEOGRAPHER: Three hours, 27
11 minutes.

12 MS. SWIFT: I mean, this last chunk.

13 THE VIDEOGRAPHER: An hour and 20.

14 MS. SWIFT: Would this be a good time to
15 stop for lunch?

16 MR. GADDY: That's fine with me.

17 THE VIDEOGRAPHER: Going off the record
18 at 12:21 p.m.

19 (Recess had.)

20 THE VIDEOGRAPHER: We're back on the
21 record at 1:07 p.m.

22 Q. Ms. Diebert, before we broke, we had
23 looked at the rate of drug mortality on the map
24 using the CDC's data. Do you recall that?

25 A. Yes.

1 Q. And then right before the break, I handed
2 you what I've marked as Exhibit 15. Do you have
3 that document in front of you?

4 A. I do.

5 Q. Do you see at the top that says "drug
6 fact sheet hydrocodone"? Do you see that?

7 A. Yes.

8 Q. Do you have an understanding of what a
9 hydrocodone combination product is?

10 A. No.

11 Q. I think I asked you earlier about drugs
12 like Lortab or Vicodin. Have you heard of those
13 drugs?

14 A. Yes.

15 Q. Do you have an understanding that those
16 are Schedule III controlled substances, or were at
17 one time?

18 A. No.

19 Q. If they were Schedule III controlled
20 substances, they would have fallen within your
21 purview as the SAIL coordinator from 2008 until
22 the time that Walgreens stopped distributing
23 controlled substances, correct?

24 A. That's correct.

25 Q. If you'd flip to the second page of this

1 document, do you see the heading that says "legal
2 status in the US"?

3 A. I do.

4 Q. Okay. And do you see it says,
5 "hydrocodone is a Schedule II narcotic that is
6 marketed in multi-ingredient Schedule III
7 products." Do you see that?

8 A. I do.

9 Q. When -- if I was to reference drugs that
10 are combination products, such as part
11 hydrocodone, part acetaminophen, does that mean
12 anything to you?

13 MS. SWIFT: Object to the form.

14 A. No.

15 Q. But you see here where this DEA fact
16 sheet indicates that hydrocodone is marketed in
17 multi-ingredient Schedule III products?

18 A. Yes. I see it says that.

19 Q. And those Schedule III products would
20 have fallen within your purview as the SAIL
21 coordinator for the Perrysburg distribution
22 center, correct?

23 MS. SWIFT: Object to the form.

24 Foundation.

25 A. Yes. While we were distributing, yes.

1 Q. Sure. If you turn back to the first
2 page, do you see the very first sentence under
3 "overview"?

4 A. Yes.

5 Q. Do you see where I am?

6 A. Uh-huh.

7 Q. Do you see that it says -- excuse me --
8 "hydrocodone is the most frequently prescribed
9 opioid in the United States and is associated with
10 more drug abuse and diversion than any other licit
11 or illicit opioid." Did I read that correctly?

12 A. Yes.

13 Q. Did you know that prior to just reading
14 it right now?

15 MS. SWIFT: Object to the form. Vague.

16 A. No.

17 Q. It continues to say, "it's an orally
18 active agent most frequently prescribed for the
19 treatment of moderate to moderately severe pain.
20 Its analgesic potency is similar to morphine." Do
21 you see that?

22 A. I see that.

23 Q. It continues to say, "hydrocodone is an
24 antitussive," if I pronounced that right, "agent
25 with an efficacy similar to that of codeine." It

1 goes on to say, "there are numerous brand and
2 generic hydrocodone products marketed in the
3 United States." Do you see it says "all are
4 combination products"? Do you see that?

5 A. I see that.

6 Q. And we looked at the second page where it
7 talked about the combination products are marketed
8 as Schedule III drugs, correct?

9 A. Yes.

10 MS. SWIFT: Object to the form.

11 Q. Okay. And those would have been drugs
12 that were within your purview as the SAIL
13 coordinator while Walgreens distributed Schedule
14 III drugs out of Perrysburg?

15 MS. SWIFT: Objection. Foundation.

16 A. Yes.

17 Q. It says, "the most frequently prescribed
18 combination is hydrocodone and acetaminophen. For
19 example, Vicodin, Lorcet, and Lortab. Other
20 examples of combination products include those
21 containing aspirin and ibuprofen, such as
22 Vicoprofen or antihistamines such as Hycomine."
23 Do you see that?

24 A. I see that.

25 Q. Did you have an understanding prior --

1 excuse me -- to just reading this document that
2 the hydrocodone combination products that would
3 have been classified as Schedule III while
4 Walgreens was distributing controlled substances
5 were the most abused opioids?

6 MS. SWIFT: Objection. Foundation.
7 Vague. Assumes facts.

8 A. No. I did not know that before you
9 reading this to me.

10 Q. Did you know that the DEA indicated --
11 was indicating that hydrocodone combination
12 products were the most abused opioid?

13 MS. SWIFT: Objection. Foundation.
14 Vague as to time.

15 A. No. I'm not aware of that.

16 Q. At any point in time while you were at
17 Walgreens as the SAIL coordinator with
18 responsibilities for Schedule III drugs did
19 anybody from the business side or the corporate
20 side, or from loss protection, or from the audit
21 department, ever tell you to do anything, to be on
22 the lookout for any suspicious orders of
23 hydrocodone combination products because of the
24 potential for abuse?

25 MS. SWIFT: Objection. Vague. Compound.

1 A. I was -- it was never a part of our
2 process to refer any type of suspicious orders. I
3 don't know if there was a department at the DC
4 that did that for suspicious orders, but it was
5 not out of my department.

6 Q. We looked at the map about -- excuse
7 me -- the increase in mortality over time from
8 drug overdose deaths. Did anybody from Walgreens
9 ever provide you with any training or education on
10 the rate of overdoses or the rate of deaths
11 associated with controlled substances?

12 MS. SWIFT: Object to the form.

13 A. There was no need to educate me on that
14 for job purposes.

15 Q. And I'm not asking you whether or not
16 there was any need. I'm asking you whether or not
17 it was ever done?

18 A. I did not ever see that kind of
19 information while I was at work, no.

20 Q. Did anybody ever stress to you the
21 importance of maintaining controls over these
22 controlled substances because of the increase in
23 overdoses and increases of deaths that were
24 happening across the country and in the Appalachia
25 region?

1 MS. SWIFT: Object to the form.

2 Compound.

3 A. So the increase in deaths or opioid abuse
4 in general didn't affect our daily processing.
5 There wouldn't have been any need for me to be
6 aware of that, and it wouldn't have affected our
7 daily operation.

8 Q. Well, whether you think there was a need
9 for it or not, it wasn't done, correct?

10 MS. SWIFT: Object to the form.

11 A. I was not informed of any information
12 pertaining to that.

13 Q. Let's go back to the -- I think it's
14 Exhibit 15 -- 13. Sorry. Exhibit 13. The
15 thick one. Are you with me?

16 A. Yes.

17 Q. Okay. And I think we were on page 29?

18 A. Yes.

19 Q. Okay. And we had been on paragraph 2,
20 and I was asking about whether or not you had an
21 understanding of Florida being the epicenter of an
22 epidemic of prescription drug abuse, and I think
23 you told me you were not; is that correct?

24 A. That's correct. I was not.

25 Q. Okay. Have you ever become aware of

1 that?

2 A. No.

3 Q. It says, "in July of 2011, the Florida
4 Surgeon General declared a public health emergency
5 based on the prescription pill epidemic which
6 results in an average of seven overdose deaths a
7 day in Florida." Do you see that?

8 A. I see that.

9 Q. Were you aware of that?

10 A. I was not aware of that.

11 Q. Nobody from Walgreens ever informed you
12 of that?

13 A. I was never aware of that.

14 Q. The controls that we talked about, or the
15 processes or procedures that you -- that we talked
16 about earlier as far as looking for these
17 excessive orders, or these fat finger type
18 ordering errors, as far as you know, was that a
19 process that was in place in all the distribution
20 centers?

21 MS. SWIFT: Objection. Foundation.

22 A. I don't know what distribution centers
23 use that process or not. I'm only aware of what
24 we used at our DC, and that was in place before I
25 became the SAIL coordinator.

1 Q. Okay. And so we know that it was in
2 place in Perrysburg, and then I think we looked at
3 some of the policies from Mt. Vernon, right?

4 A. Yes.

5 Q. Okay. So we know that at least the other
6 distribution centers had some type of policy on
7 that, correct?

8 A. Well, I know that Mt. Vernon did and
9 Perrysburg did.

10 Q. Okay. You would expect that all the
11 distribution centers would follow the same general
12 procedures in that regard?

13 A. I would expect that they would have
14 something similar in place.

15 MS. ARENT: Object to the form.

16 Q. If you'd turn to the top of page 30 for
17 me, please. And do you see at the top of that
18 page there's a chart that shows in the first
19 column store numbers and locations, and then in
20 the next three columns there are oxycodone
21 purchases by dosage unit in 2009, 2010 and 2011;
22 do you see that?

23 A. I do.

24 Q. And do you see for the first one there it
25 indicates a store number, and it says that that

1 store is located in Hudson, Florida?

2 A. I do.

3 Q. Okay. And I think we can agree that that
4 would not be a store that Perrysburg would have
5 serviced; is that fair?

6 A. I don't know if we would have serviced
7 them during those years. I don't recall when we
8 started shipping the C-IIs.

9 Q. Okay. Well, if I was to represent to you
10 at this point in time, 2009, 2010, 2011, that
11 Perrysburg was not shipping C-IIs to Hudson,
12 Florida, you wouldn't have any issue with that,
13 would you?

14 MS. SWIFT: Object to the form.

15 A. Yes. If -- yes.

16 Q. Okay. And do you see there in 2009 it
17 indicates that that Hudson, Florida store received
18 approximately 388,000 dosage units of oxycodone?

19 MS. SWIFT: Object to the form.

20 A. I do.

21 Q. And then in 2010 it went up to
22 approximately 913,000 dosage units?

23 A. Yes.

24 Q. And that in 2011 it went up to
25 approximately 2.2 million dosage units of

1 oxycodone; do you see that?

2 A. I do see that.

3 Q. And you agree with me that over that
4 three-year span from '09 to '11, or from '09 to
5 two years later in 2011, that the amount of
6 oxycodone dosage units going into that particular
7 store increased approximately 500 percent?

8 MS. SWIFT: Object to the form.

9 A. That looks about average.

10 Q. And if you look at the second entry there
11 for Ft. Myers, Florida, do you see that in 2009
12 the DEA is indicating here in this order to show
13 cause that that store received about 95,000 units
14 of oxycodone that year; do you see that?

15 A. Yes.

16 Q. And that in 2010 the number of oxycodone
17 units for that store went up to 496,000 units?

18 A. Yes.

19 Q. And that in 2011 the number of units to
20 that store went up to approximately 2.1 million
21 dosage units of oxycodone; do you see that?

22 A. Yes, I do.

23 Q. Again, rough math, and I'm not going to
24 hold you to it, but you agree it looks like that
25 increased about 2,000 percent?

1 MS. SWIFT: Object to the form.

2 A. It increased a lot.

3 Q. And if you look at the next one, Oviedo,
4 Florida, about from 80,000 to 223,000 to 1.6
5 million; do you see that?

6 A. Yes.

7 Q. About over 1,500 percent increase; do you
8 agree with that?

9 MS. SWIFT: Object to the form.

10 A. Yes.

11 Q. At any point in time did anybody from
12 Walgreens, whether it's corporate, internal audit,
13 loss prevention, or anywhere else, come to you
14 within your role as the SAIL coordinator at the
15 distribution center and ask you to do anything to
16 be on the lookout for these types of increases in
17 the stores that Perrysburg serviced?

18 MS. SWIFT: Object to the form.

19 A. No.

20 Q. At any point in time did anybody from
21 Walgreens, whether it's from corporate, from loss
22 prevention, internal audit, the Rx Integrity unit
23 that we've seen reference to, did anybody ever
24 come and tell you that, hey, we made some mistakes
25 in Florida, here's what we need to do to change

1 and to learn from those mistakes?

2 MS. SWIFT: Object to the form.

3 A. No. Nobody ever included me on any
4 issues that may have existed in those stores. I
5 was not aware of them.

6 Q. Well, this isn't necessarily an issue in
7 the stores. Do you see this was an issue in a
8 distribution center?

9 MS. SWIFT: Object to the form.

10 A. It doesn't show that it was an issue with
11 the distribution center. It just shows the
12 quantities that the stores were ordering.

13 Q. Sure, sure. That particular chart. But
14 if you look at the order to show cause, you see
15 that it was given to the Jupiter distribution
16 center?

17 MS. SWIFT: Object to the form.

18 Q. Correct? Do you recall we saw that?

19 MS. SWIFT: Do you want her to read the
20 whole document, Jeff? She said she's never seen
21 it before.

22 A. I'm not familiar with it.

23 Q. Okay. Flip back to page 29 for me,
24 please. Do you see paragraph 4?

25 A. Yes, sir.

1 Q. It says there, "since 2009, Walgreens'
2 Jupiter, Florida distribution center has been the
3 single largest distributor of oxycodone products
4 in Florida. About the same time as the abuse of
5 prescription drugs became an epidemic in Florida,
6 Walgreens' Florida retail pharmacies supplied by
7 Respondent, Walgreens, commanded an increasingly
8 large percentage of the state's growing oxycodone
9 business." Did I read that correctly?

10 A. Yes.

11 Q. It says, "in 2010, only three Walgreens
12 retail pharmacies were in the top 100 purchasers
13 of oxycodone within Florida. In 2011, 38
14 Walgreens pharmacies made the top 100, and six
15 were in the top 10, and through May 2012, 44
16 Walgreens pharmacies are in the top 100 oxycodone
17 purchasers, all of them supplied by Respondent,
18 Walgreens." Do you see that?

19 A. Yes.

20 Q. Okay. And do you recognize in the first
21 sentence of that paragraph that it says the
22 Jupiter distribution center is the single largest
23 distributor of oxycodone in the State of Florida?
24 Do you see that?

25 A. It does say that.

1 Q. Did anybody at any time from any of these
2 Walgreens departments that we've talked about
3 today ever come to you and talk to you about
4 issues that the DEA was alleging existed in the
5 Jupiter distribution center, and talk to you about
6 how you could make sure that those same problems
7 did not happen in Perrysburg?

8 MS. SWIFT: Object to the form. Assumes
9 facts. Compound.

10 A. No. No one ever included me on anything
11 that was happening at the Jupiter, Florida DC.

12 Q. Okay. Let's go back to the first
13 document, which is the settlement agreement. And
14 we looked at this before the break, just so we get
15 our bearings back, if you would look at page 11
16 for me, please.

17 A. I'm there.

18 Q. Do you see this was signed in June 2013?

19 A. Yes, sir.

20 Q. Okay. And if you'd flip back, I want to
21 look at page 7 of 349.

22 A. Okay.

23 Q. Do you see at the top of the page it says
24 "Walgreens obligations"?

25 A. Yes.

1 Q. And do you see paragraph C underneath
2 there?

3 A. Yes, sir.

4 Q. And it says, "Walgreens agrees to pay the
5 United States \$80 million within 10 days of the
6 effective date of this agreement." Do you see
7 that?

8 A. I do see that.

9 Q. Prior to reading that right here today,
10 did you have any understanding that Walgreens paid
11 an \$80 million settlement to the DEA?

12 A. I was not aware of that.

13 Q. Would you agree with me that \$80 million
14 is a substantial sum of money?

15 A. It sounds like a lot of money to me.

16 Q. Do you recall receiving any communication
17 from anybody at Walgreens regarding this action?

18 A. No. I never received any communication
19 on this.

20 Q. And Jupiter was only one of two other
21 distribution centers that Walgreens had that dealt
22 with Schedule II drugs, correct?

23 A. That's correct.

24 Q. If you'd turn to page 14 of 349 -- page
25 14. Do you see at the top of the page it says

1 that this is the -- an addendum?

2 A. Yes.

3 Q. And it says just under that, "the parties
4 agree that Walgreens will maintain the following
5 specific compliance measures for the duration of
6 this agreement." Do you see that?

7 A. I see that.

8 Q. And then under A-1 it says, "Walgreens
9 will maintain a department of pharmaceutical
10 integrity and post a personnel with primary" --
11 excuse me -- "with pharmacy-related training and
12 managerial personnel who shall be trained in
13 relevant diversion-related issues to coordinate
14 compliance efforts related to controlled
15 substances." Do you see that?

16 A. I do.

17 Q. It goes on to say, "within one month of
18 the effective date of this agreement, Walgreens
19 will identify a dedicated contact point for DEA
20 within the department of pharmaceutical integrity
21 to facilitate Walgreens' responses to DEA requests
22 for information and documents." Do you see that?

23 A. I do.

24 Q. Do you know whether or not you were ever
25 provided any education or training under this

1 provision of the addendum of the settlement
2 agreement?

3 A. I don't recall ever having any training
4 under this.

5 Q. Do you recall ever receiving any training
6 in diversion-related issues at all?

7 MS. SWIFT: Object to the form. Vague.

8 A. I -- I don't recall ever receiving any
9 training for diversion issues at all either.

10 Q. I'll show you what I'll mark as Exhibit
11 16. This is P-WAG-225.

12 - - - - -

13 (Thereupon, Deposition Exhibit
14 Walgreens-Diebert 16, June 19, 2013
15 E-mail WAGMDL00316771 - 00316785,
16 was marked for purposes of
17 identification.)

18 - - - - -

19 Q. And do you see at the top of the page
20 this is an e-mail from Tasha Polster sent on June
21 19, 2013?

22 A. Yes.

23 Q. And so this is about -- if you need to
24 look back, you can -- but about a week after the
25 settlement agreement was signed. Do you agree

1 with that?

2 A. Yes.

3 Q. And the subject is "Rx Integrity team and
4 DEA agreement action required." Do you see that?

5 A. Yes.

6 Q. And down below there we see the original
7 e-mail from Ms. Polster; do you see that?

8 A. I do.

9 Q. Do you know who Ms. Polster is?

10 A. I do not.

11 Q. Have you ever had any interaction with
12 her at all?

13 A. No. I don't remember her name.

14 Q. And you're currently the C2 manager at
15 Perrysburg, correct?

16 A. Yes.

17 Q. You don't know Ms. Polster, you never had
18 any interaction with her?

19 A. Not that I recall, no.

20 Q. Do you have any interaction at all with
21 the Rx Integrity team?

22 A. I do.

23 Q. Who do you interact with on that team?

24 A. Just the group. If we have -- if stores
25 have questions about any of their orders, or why

1 they're not getting them from ABC, we refer them
2 to Rx Integrity, and they assist them.

3 Q. Is that the extent of your involvement
4 with Rx Integrity?

5 A. They'll ask us if we can change schedules
6 sometimes, which don't affect orders, just the day
7 of the orders. That's about the extent of it,
8 though.

9 Q. Okay. So would it be fair to say that if
10 stores are having issues with the orders they're
11 receiving, or maybe not receiving from ABC, that
12 you will liaison between the store and Rx
13 Integrity to help them get the issue resolved?

14 MS. SWIFT: Object to the form.

15 MS. SCHUCHARDT: Object to the form.

16 A. I will put them in contact -- I will tell
17 them to contact Rx Integrity or ABC. I don't
18 actually get involved.

19 Q. Okay. If we go down to the e-mail below
20 to the body of that e-mail, she says, "Hello. For
21 those of you who don't know me, I'd like to
22 introduce myself and my team. My name is Tasha
23 Polster. I'm the director of pharmaceutical
24 integrity." Do you see that?

25 A. I do.

1 Q. Okay. And I don't believe you're
2 included on this e-mail, but about in the middle
3 of the block there, do you see Ms. Bish?

4 A. Yes.

5 Q. And then also Tammy Trumbull?

6 A. Yes.

7 Q. Who is also Tammy Hensley?

8 A. Yes.

9 Q. And those are folks at Perrysburg,
10 correct?

11 A. That's correct.

12 Q. Anybody else on this e-mail that's from
13 Perrysburg?

14 MS. SWIFT: Objection. Foundation.

15 A. I don't believe so.

16 Q. Okay. She goes on to say -- I'm going to
17 skip the next sentence, but in the one after that,
18 she says, "the overview document provides a brief
19 description of what my team does and the names and
20 contact information for each of my managers by
21 division. Feel free to reach out to any of us."
22 Do you see that?

23 A. I do.

24 Q. She then goes on to say that "the DC
25 controlled substance contact personnel spreadsheet

1 has names that Sue gave me of who is responsible
2 for reading the DC suspicious order monitoring
3 policy and procedure. I need documentation of one
4 person in each DC, some of which I've already
5 gotten back." Do you see that?

6 A. I see it says that, yes.

7 Q. Are you aware of any suspicious order
8 monitoring policy and procedure that is available
9 to you within the distribution center?

10 MS. SWIFT: Object to the form.

11 A. I am not -- I am not aware of any
12 suspicious order monitoring from the distribution
13 center.

14 Q. And you certainly haven't reviewed any
15 suspicious order monitoring policy or procedure,
16 correct?

17 MS. SWIFT: Object to the form.

18 Foundation. Calls for speculation.

19 A. I am not aware of what the suspicious
20 ordering process is or who does it.

21 Q. Then in the last paragraph, do you see
22 she writes, "it's been a long year-and-a-half
23 getting this DEA settlement in place." Do you see
24 that?

25 A. I do.

1 Q. Okay. So if this was -- e-mail was sent
2 in June of 2013, that would indicate that this has
3 been in the works going back to early 2012; would
4 that be fair?

5 MS. SWIFT: Objection. Foundation.

6 A. Yes.

7 Q. She says, "we want to ensure we have
8 proper documentation and accountability for this
9 compliance piece." Do you see that?

10 A. I do.

11 Q. If you'd turn with me in this document to
12 Bates ending 776.

13 A. Okay.

14 Q. Do you see this -- I think we looked at
15 this shortly before the break. Do you recognize
16 this suspicious order monitoring program policy
17 and procedure?

18 A. Not before today.

19 Q. Okay. Do you recall we looked at it a
20 little bit earlier?

21 A. Yes.

22 Q. Okay. And so this was attached there
23 also. I think -- I can't remember if I asked you
24 this or not, so I'm sorry if I did. But do you
25 see there in the middle of the page there's a

1 bolded section that talks about the ceiling limit?

2 A. Yes.

3 Q. And I think you told us that that was a
4 term that you had heard of, but you didn't really
5 have any involvement in setting it or manipulating
6 it, correct?

7 A. That is correct.

8 Q. And then same thing at the bottom of the
9 page where it talks about tolerance limits, I
10 think you'd heard that phrase but didn't have any
11 involvement with setting it or manipulating it,
12 correct?

13 A. I have not heard the tolerance limits
14 phrase before, and I don't have any knowledge of
15 it. Ceiling limits I have heard of. But, again,
16 I don't have any dealing with that.

17 Q. Okay. I'll show you what I'll mark as
18 Exhibit 17.

19 - - - - -

20 (Thereupon, Deposition Exhibit
21 Walgreens-Diebert 17, Suspicious
22 Order Report WAGMDL00674562 -
23 00674575, was marked for purposes of
24 identification.)

25 - - - - -

1 Q. I'll ask you if you've ever seen those
2 reports before. Do you see at the top of the page
3 this says -- the top right-hand corner, it's got a
4 date of August 18, 2010; do you see that?

5 A. Yes.

6 Q. And just below that it says "suspicious
7 order." Do you see that?

8 A. Yes.

9 Q. And then it has some information in the
10 top of the page as far as the store number and
11 drug number. Do you see for the item description
12 it says "hydromorphone"?

13 A. I do see that.

14 Q. And then down at the very bottom of the
15 page it gives a reason code for why this was a
16 suspicious order, and it says "T, exceeds
17 tolerance limit." Do you see that?

18 A. I do see that.

19 Q. Okay. First of all, let me ask you; have
20 you ever seen a report like this before?

21 A. I have not.

22 Q. Have you ever heard of suspicious order
23 reports that were generated such as this based on
24 things like tolerance?

25 MS. SWIFT: Object to the extent it

1 mischaracterizes the document.

2 A. I have not heard of any documents
3 generated from suspicious order reports.

4 Q. And if you don't mind flipping through
5 the document a little bit, for the most part the
6 reports are the same, but there's a couple of
7 different reports included in here with different
8 titles at the top. Some are "order item detail,"
9 some are "loss prevention." Just tell me whether
10 you recognize any of these.

11 A. I have not seen any of these forms
12 before. I'm not familiar with any of them.

13 Q. Okay. Flip with me, please, to page 32.
14 Yeah, Exhibit 13. Thank you. I'm sorry.

15 MS. SWIFT: What page did you say, Jeff?

16 MR. GADDY: 32.

17 Q. And do you see paragraph 12 there?

18 A. I do.

19 Q. Okay. And we're back in the order to
20 show cause that was issued to the Jupiter
21 distribution center. And it says, "Respondent,"
22 meaning Walgreens, "employee with overall
23 responsibility for C-II drug operations, the C2
24 function manager raised questions within the
25 corporation about what she correctly identified as

1 unusually large orders for Schedule II narcotics
2 placed regularly by several customer pharmacies."
3 Do you see that?

4 A. I do see that.

5 Q. Okay. And when you were at Perrysburg in
6 this time frame, this is, I think, September of
7 2012, I think you told us Deb Bish was the C2
8 function manager at Perrysburg; is that correct?

9 A. That is correct.

10 Q. It says, "based on the evidence available
11 to DEA, none of these orders were reported to DEA
12 as suspicious, and all appear to have been shipped
13 without any further due diligence to verify their
14 legitimacy." Do you see that?

15 A. I see that it says that.

16 Q. If you read in paragraph A, it says, "in
17 January of 2011, Jupiter's C2 function manager
18 expressed concern about the enormous volume of 30
19 milligram oxycodone being ordered by three
20 stores," and it gives the stores numbers. It
21 says, "concluding in an e-mail to the manager of
22 Rx inventory drug stores at Walgreens' corporate
23 headquarters in Deerfield, Illinois, that she felt
24 the stores needed to justify the large quantity."
25 Do you see that?

1 A. I do see that.

2 Q. It goes on to say, "with regard to one
3 particular store in Port Ritchie, she noted that
4 Walgreens shipped the store 3,271 bottles of
5 100-count 30 milligram oxycodone in the 40-day
6 period from December 1, 2010 to January 10, 2011,
7 causing her to question how they could even house
8 this many bottles. She then inquired of the same
9 corporate manager how do we go about checking the
10 validity of those orders." Do you see that?

11 A. I do see that.

12 Q. Prior to looking at this and reading it
13 just now, did you know that some of the questions
14 that had been raised by the C2 manager in the
15 Jupiter distribution center had been included in
16 this order to show cause and the DEA investigation
17 into the -- into the distribution center?

18 A. I was not aware of that.

19 Q. And at no time did anybody from Walgreens
20 ever come and tell you that -- particularly now
21 that you're the C2 manager -- that you needed to
22 be on the lookout for things like this?

23 MS. SWIFT: Object to the form.

24 A. I became C2 manager after we stopped
25 distributing, so this wouldn't have affected what

1 we do now.

2 Q. Okay. Well, regardless of whether or not
3 you think it would or would not affect it; when
4 you became C2 manager, you weren't ever asked to
5 be on the lookout for things like this that this
6 particular C2 manager was raising questions about?

7 MS. SWIFT: Object to the form. Vague.

8 A. I was not approached and asked to keep on
9 the lookout for that, as we don't check for the
10 orders now that we process them electronically.

11 Q. You just get the orders and sign the
12 4,000 orders on a daily basis and get them to ABC?

13 MS. SWIFT: Object to the form.

14 A. That's what the C2 signers do now, and
15 what I manage.

16 Q. Now, Jupiter was not the only
17 distribution center to be investigated by the DEA,
18 correct?

19 MS. SWIFT: Object to the form.

20 A. I don't have any knowledge of who was
21 investigated by the DEA, if or when.

22 Q. Did the DEA come to the Perrysburg
23 distribution center?

24 MS. SWIFT: Object to the form. Vague.

25 A. I was not included with it. I know that

1 the DEA did come to the Perrysburg distribution
2 center, but I don't know in what capacity.

3 Q. Okay. Let me show you what I'll mark as
4 Exhibit 18.

5 - - - - -

6 (Thereupon, Deposition Exhibit
7 Walgreens-Diebert 18, Administrative
8 Inspection Warrant WAGMDL00493697 -
9 00493700, was marked for purposes of
10 identification.)

11 - - - - -

12 Q. This is P-WAG-15.

13 Do you see at the top of this document it
14 says, "in the United States District Court for the
15 Northern District of Ohio, Western Division, in
16 the matter of the administrative inspection of
17 Walgreens Corporation;" do you see that?

18 A. I do see that.

19 Q. And what address is given there?

20 A. For Walgreens, it's our address in
21 Perrysburg.

22 Q. Okay. That's the Perrysburg distribution
23 center?

24 A. It is.

25 Q. And do you see on the right side of the

1 page that it has the name of a magistrate, and
2 then it says "administrative inspection warrant."
3 Do you see that?

4 A. I do.

5 Q. Flip to the last page, if you don't mind,
6 please. Do you see it says February 5, 2013 is
7 the date?

8 A. Yes.

9 Q. Okay. So this would be a couple months
10 after that order to show cause was issued to
11 Jupiter, and a couple months before the settlement
12 agreement was signed?

13 MS. SWIFT: Object to the form.

14 Q. Do you agree with that?

15 MS. SWIFT: Foundation.

16 A. Based on what those forms say, yes.

17 Q. Okay. So if you go to the last page, do
18 you see the date is February 5, 2013? And we
19 agree that's between the time of the order to show
20 cause that was issued to Jupiter and the time in
21 which Walgreens signed the settlement with the
22 DEA, correct, Ms. Diebert?

23 MS. SWIFT: Object to the form.

24 A. Yes.

25 Q. And if we go back to the first page of

1 the document, we see that this is the -- the top
2 right-hand side of the page, this is an
3 administrative inspection warrant?

4 A. Yes.

5 Q. And it says in the body, it says, "to
6 Wayne Groves, diversion investigator, and any
7 other authorized diversion investigator or special
8 agent of the Drug Enforcement Administration of
9 the US Department of Justice." It goes on to say,
10 "application having been made and probable cause,
11 as defined in certain statutes and regulations
12 having been shown by the affidavit of Wayne Groves
13 for an inspection of the controlled premises of
14 Walgreens Corporation in Perrysburg, Ohio, it
15 appears that such inspection is appropriate under
16 21 USC Section 880." Do you see that?

17 A. I see that.

18 Q. Have you ever seen this warrant before?

19 A. I have not.

20 Q. Then it goes on to say, "therefore," in
21 paragraph 2, "pursuant to the provisions of 21 USC
22 Section 880, you are hereby authorized to enter
23 the above-described premises within business hours
24 for the following purposes." Do you see that?

25 A. Yes.

1 Q. And under paragraph A it says, "to
2 inspect and copy records, reports, files, official
3 order forms, and other documents required to be
4 made, kept, and maintained under the provisions of
5 the Controlled Substance Act." Do you see that?

6 A. I see that.

7 Q. And there's several other items listed
8 there. But if you turn to the back page with me
9 to page 4, do you see under A at the top of the
10 page it also "authorizes the inspection of all
11 other records which refer to or relate to the
12 distribution of controlled substances, and all
13 records pertaining to the filing of suspicious
14 order reports with the local Field Division Office
15 of DEA." Do you see that?

16 A. I do see that.

17 Q. It says, "as well as a records pertaining
18 to a distributor maintaining effective controls
19 against diversion pursuant to 21 USC Section 823
20 from February 1, '11 through February 5, '13." Do
21 you see that?

22 A. I see that.

23 Q. Were you made aware of what the DEA was
24 there to do and look for when they came to the
25 Perrysburg distribution center in February of

1 2013?

2 A. I was not made aware of any DEA
3 inspection.

4 Q. How did you know that it occurred?

5 A. Rumors from team members.

6 Q. Did anybody from the business side ever
7 give you any information about why the DEA came to
8 the Perrysburg distribution center with a warrant
9 and the subpoenas?

10 MS. SWIFT: Object to the form. Vague.

11 A. No. I was never informed of why the DEA
12 may have been there.

13 Q. Did Deb Bish or anybody else within the
14 distribution center give you any information about
15 why DEA came to Perrysburg?

16 MS. SWIFT: Objection. Asked and
17 answered.

18 A. No. No one gave me any information as to
19 why the DEA was there, or may have been there.

20 Q. Did you have any involvement with
21 responding to any of the warrants or the subpoenas
22 that the DEA served?

23 MS. SWIFT: Object to the form. Vague.

24 A. I was not asked for any information for
25 any DEA visits.

1 Q. I'll show you what I'll mark as Exhibit
2 19. It's P-WAG-2604.

3 - - - - -

4 (Thereupon, Deposition Exhibit
5 Walgreens-Diebert 19, February 8,
6 2013 E-mail WAGMDL00698433 -
7 00698434, was marked for purposes of
8 identification.)

9 - - - - -

10 Q. Do you see at the top of the page this is
11 an e-mail from a Jamie Whited on February 8, 2013?

12 A. Yes. I see that.

13 Q. And that he is forwarding in an e-mail
14 from below that was sent on February 7, 2013; do
15 you see that?

16 A. Yes, I do.

17 Q. And so this looks like this was sent to,
18 again, some group e-mail accounts; do you see
19 that?

20 A. Yes.

21 Q. Do you recognize the recipients of those
22 group e-mail accounts?

23 A. No, I don't.

24 Q. It says, "District and market leaders.
25 On Wednesday, February 6th, the DEA inspected the

1 Perrysburg distribution center in Ohio and
2 requested records pertaining to controlled
3 substances." Do you see that?

4 A. I do see that.

5 Q. And so it looks like -- we saw the
6 warrant was dated on the 5th, this e-mail is on
7 the 7th. It looks like DEA actually came into the
8 distribution center on February 6th, according to
9 this document; do you see that?

10 A. I do see that.

11 Q. Okay. Were you working when the DEA came
12 into the facility?

13 MS. SWIFT: Object to the form.
14 Foundation.

15 A. I don't know what time the DEA came in.
16 I'm not sure if I was working at the time or not.

17 Q. Do you recall seeing them come in?

18 A. I did not personally see anybody when the
19 DEA got there.

20 Q. Do you remember how you found out that
21 the DEA was there?

22 A. Like I said, rumors from team members.

23 Q. Did you find out while they were there,
24 or did you find out after the fact?

25 A. I don't know.

1 Q. Okay. Then it goes on to say, "for your
2 reference, the following COMPASS communication
3 will be provided to your stores today." Do you
4 see that?

5 A. I do see that.

6 Q. Okay. And the COMPASS communication
7 starts out with providing the same information,
8 that the day before DEA had inspected the
9 Perrysburg distribution center; do you see that?

10 A. I do see that.

11 Q. And then if you skip down, it says, "the
12 procedures below provide a brief overview of steps
13 to take in the event you receive a warrant at your
14 location." Do you see that?

15 A. I do.

16 Q. And it indicated that this was a
17 communication that was going out to the stores and
18 the pharmacy managers, correct?

19 A. Yes.

20 Q. And in the first bullet point, it says,
21 "ask DEA agents for identification and the purpose
22 for their visit and allow agents immediate access
23 to the pharmacy department and direct them to the
24 requested records." Do you see that?

25 A. I see that.

1 Q. It goes on to say that "district and
2 pharmacy team members are not required to answer
3 any questions." Do you see that?

4 A. I do see that.

5 Q. And "not required" is underlined,
6 correct?

7 A. That's correct.

8 Q. It says, "you're not required to answer
9 any questions, participate in interviews, or
10 provide written statements to the DEA
11 investigators." Do you see that?

12 A. I do see that.

13 Q. It goes on to say, "participating in
14 these requests may potentially expose the company
15 and the individual team member to liability." Do
16 you see that?

17 A. I do see that.

18 Q. Did anyone at Walgreens, whether it's in
19 the distribution center, whether it's the
20 corporate side, the loss prevention folks, audit
21 folks, ever advise you to not speak with any of
22 the DEA investigators?

23 A. I was never given any instruction at all
24 in regards to the DEA.

25 Q. Do you know what information that you

1 would have had, or that any of these store or
2 pharmacy managers would have had that would have
3 exposed Walgreens to liability?

4 MS. SWIFT: Objection. Foundation.
5 Calls for a legal conclusion.

6 A. Nobody ever instructed me one way or the
7 other, and I didn't know what kind of
8 communication went out to the stores.

9 Q. Do you know what information the stores
10 had that Walgreens was concerned might expose them
11 to liability?

12 MS. SWIFT: Same objections.

13 A. I am not aware of any information for the
14 stores.

15 Q. Do you have any understanding as to why
16 Walgreens is telling the store and pharmacy
17 managers that if they talked to the DEA they might
18 be subject to liability?

19 MS. SWIFT: Objection. Foundation.

20 A. I am not aware of that.

21 Q. Did anybody at Walgreens ever tell you
22 that if you talked to the DEA you might personally
23 be subject to liability that's -- as is indicated
24 here?

25 A. I don't recall ever being spoken to by

1 anybody about any DEA research or investigation.

2 Q. But it looks like this communication went
3 out to the -- to the stores the day after the DEA
4 came in, correct?

5 MS. SWIFT: Objection. The document
6 speaks for itself. Foundation.

7 A. It looks like it may have in a COMPASS
8 message.

9 Q. I'll show you P-WAG-1361, which I'll mark
10 as Exhibit 20.

11 - - - - -

12 (Thereupon, Deposition Exhibit
13 Walgreens-Diebert 20, E-mail
14 WAGMDL00303243 - 00303245, was
15 marked for purposes of
16 identification.)

17 - - - - -

18 Q. Do you see here at the top of the page
19 this is an e-mail from Barb Martin in February
20 2013?

21 A. I do see that.

22 Q. Do you know who Ms. Martin is?

23 A. She works for Rx Integrity or Inventory
24 at corporate.

25 Q. Do you have any understanding for what

1 she does in her role?

2 A. No, I don't.

3 Q. And it looks like this e-mail was going
4 to Patty Daugherty. Do you know who that is?

5 A. I have seen her name, but I don't know
6 what capacity she works for for Walgreens.

7 Q. And the subject of this was "draft
8 communication." Do you see that?

9 A. I do see that.

10 Q. And, again, this communication in
11 February of 2013, this is going to be
12 approximately five months after the order to show
13 cause was issued to the Jupiter distribution
14 center; do you see that?

15 A. Yes.

16 Q. It says, "per my voicemail, here are
17 copies of my draft communication to go to the
18 stores serviced by Perrysburg to be sent out if
19 Perrysburg has to close." Do you see that?

20 A. I see that.

21 Q. Do you recall that after the DEA came in
22 in early February 2013 that there was concern that
23 the Perrysburg distribution center was going to
24 get shut down?

25 A. I don't recall what the concern was at

1 that time when the DEA came for a visit.

2 Q. But it looks like there was enough
3 concern that there was a potential communication
4 drafted; do you see that?

5 MS. SWIFT: Objection. Foundation.

6 A. I see that there was a communication that
7 they wanted to draft. I don't know the extent of
8 the concern.

9 Q. Okay. Look at the next page. Do you see
10 the draft communication? It says, "beginning the
11 week of February 18, 2013, stores that have been
12 receiving their Schedule II controlled substance
13 orders from the Walgreens distribution center in
14 Perrysburg, Ohio will now have their orders
15 shipped from the local Cardinal center." Do you
16 see that?

17 A. I do see that.

18 Q. And do you know whether or not this is
19 the procedure that actually ended up going in
20 place?

21 MS. SWIFT: Objection. Foundation.

22 MS. ARENT: Objection to form.

23 A. I'm not aware of any.

24 Q. Do you recall any communication given to
25 you in your role as the SAIL coordinator, because

1 in this time -- and you're still the SAIL
2 coordinator for III to Vs at this time period,
3 correct?

4 A. I don't recall when we stopped
5 distributing them. If we were still distributing
6 them, then yes, I was.

7 Q. Do you recall any communication given to
8 you as the SAIL coordinator for Schedule III to V
9 controlled substances that there was concern that
10 the DEA might shut down the distribution center?

11 A. No. I don't remember any such
12 communication.

13 Q. Okay. I'll show you what I'll mark as
14 Exhibit Number 21. It's going to be P-WAG-2055.

15 - - - - -

16 (Thereupon, Deposition Exhibit
17 Walgreens-Diebert 21, February 18,
18 2013 E-mail WAGMDL00524429 -
19 00524429, was marked for purposes of
20 identification.)

21 - - - - -

22 Q. Do you see this is an e-mail from
23 February 18, 2013?

24 A. Yes.

25 Q. And do you see that the subject line of

1 that e-mail is "Perrysburg plan week of February
2 18th"?

3 A. Yes.

4 Q. And there's a couple of headings there,
5 and the first heading is for C2. Do you see that?

6 A. I do see that.

7 Q. And it says there, "Perrysburg will
8 continue to pick what they can until the DEA comes
9 and shuts them down." Do you see that?

10 A. I do see that.

11 Q. And when it says "Perrysburg will
12 continue to pick what they can," in distribution
13 center parlance, what does that mean?

14 MS. SWIFT: Object to the form.
15 Foundation.

16 A. To my knowledge, for a distribution
17 center, that means that they will fill the orders
18 that they get and process.

19 Q. Okay. So it's indicating that Perrysburg
20 will continue to fill the orders they can until
21 the DEA comes in and shuts them down?

22 MS. SWIFT: Object to the form.
23 Foundation.

24 A. To my knowledge, and according to what
25 that says.

1 Q. Okay. The next heading there is for
2 C-III through C-V. Do you see that?

3 A. I do see that.

4 Q. And in the first bullet point it says,
5 "Perrysburg will make all the quantity
6 unavailable." Do you see that?

7 A. I do see that.

8 Q. And is that consistent with your
9 recollection that at some point in time after the
10 DEA came into Perrysburg, that you stopped --
11 excuse me -- the Perrysburg distribution center
12 stopped distributing C-III through C-V drugs?

13 MS. SWIFT: Object to the form.
14 Foundation.

15 A. I don't remember when we stopped filling
16 C-III through V distribution orders.

17 Q. If you go to the next bullet point, do
18 you see it says, "for orders today, 2/18, through
19 ISE" -- do you know what "ISE" means?

20 A. No.

21 Q. It says, "for orders today, 2/18," it
22 says, "ISE and Perrysburg team will follow the
23 same process that we followed over the weekend to
24 manually redirect orders to Mt. Vernon, Lehigh and
25 Windsor." Do you see that?

1 A. I do see that.

2 Q. Okay. And those are three other
3 distribution centers, correct?

4 A. That's correct.

5 Q. And those three distribution centers do
6 distribute C-III through C-V drugs, correct?

7 MS. SWIFT: Object to the form. Vague.

8 A. I -- I don't know if they were
9 distributing C-III through Vs at that time or not.

10 Q. Okay. Well, regardless, what this bullet
11 point is -- you understand this bullet point to be
12 indicating that C-III through C-V orders that were
13 received by Perrysburg would be manually forwarded
14 to other distribution centers?

15 MS. SWIFT: Object to the form.
16 Foundation.

17 A. I do see that it says that.

18 Q. Okay. You then see in the next bullet
19 point it says, "ISE is making a program change to
20 redirect C3-5 orders based on the patterns
21 regardless of available quantity in Perrysburg."
22 Do you see that?

23 A. Yes. I see it says that.

24 Q. From looking at this document that's
25 dated February 18, 2013, do you understand it to

1 be indicating that Perrysburg is in the process of
2 winding down their distribution of C-III to C-V
3 products?

4 MS. SWIFT: Objection. Foundation.

5 A. I see that it says that the orders are
6 going to be redirected until Perrysburg shuts down
7 based on what the DEA says.

8 Q. So that would indicate to you that up
9 until -- up until this point, Perrysburg was
10 receiving and processing C-III to C-V orders?

11 MS. SWIFT: Object to the form.
12 Foundation. The document says what it says.

13 A. I see that it says that.

14 Q. Okay.

15 A. It indicates that we were still shipping
16 those at the time, yes.

17 Q. I mean, after you stopped shipping those,
18 you didn't get the orders in anymore, did you?

19 MS. SWIFT: Object to the form.

20 A. I couldn't verify if we still got orders
21 or not, or if they were redirected to the other
22 DCs.

23 Q. Okay. I'll show you what I'll mark as
24 Exhibit 22.

25 - - - - -

1 (Thereupon, Deposition Exhibit
2 Walgreens-Diebert 22, March 22, 2013
3 E-mail WAGMDL00358555 - 00358557,
4 was marked for purposes of
5 identification.)

6 - - - - -

7 Q. This is P-WAG-2031.

8 And do you see this as another e-mail
9 from March 22, 2013, about a month after the last
10 one we looked at?

11 A. Yes.

12 Q. And the subject line is "Perrysburg CIII
13 through CV follow-up." Do you see that?

14 A. I do see that.

15 Q. Okay. And so let's do the C-III through
16 C-V first. So go to the second page, please. And
17 if you go down to the bottom of the page, do you
18 see the heading "CIII-CV"?

19 A. I do.

20 Q. Okay. And I think what you'll see here
21 is it's kind of some rolling updates. So what we
22 have is the original entry that we just looked at
23 in the last e-mail, and then below that you'll see
24 some updates that are made over time. So we see
25 the same thing we looked at originally in the

1 first bullet point saying Perrysburg will make all
2 the quantity unavailable; do you see that?

3 A. I do see that.

4 Q. Okay. Then if you look at the second --
5 just below there, you see it has an update for
6 2/20?

7 A. Yes.

8 Q. Okay. And if you look at those bullet
9 points, do you see the third bullet point under
10 the 2/20 update, it says "all inventory will be
11 send to Mt. Vernon." Do you see that?

12 A. I do see that.

13 Q. And does that indicate to you that the
14 inventory of C-III to C-V drugs is being removed
15 from the Perrysburg distribution center and sent
16 to the Mt. Vernon distribution center?

17 MS. SWIFT: Object to the form.
18 Foundation. The documents speaks for itself.

19 A. That is what it says on the document.

20 Q. And then if we look at the 2/22 update,
21 do you see that it says in the first bullet point,
22 "all 3 to 5 transfers have been sent to Mt. Vernon
23 as of Thursday, 2/21, with the exception of one to
24 two cases." Do you see that?

25 A. I do see that.

1 Q. It goes on to say, "the transfers will be
2 received by Mt. Vernon by the end of the week."
3 Do you see that?

4 A. I do see that.

5 Q. Did you have any involvement in the
6 transferring of the 3 to 5 inventory from
7 Perrysburg to Mt. Vernon?

8 A. Not that I recall.

9 Q. Do you know who would have been in charge
10 of that?

11 A. The only person I could think that may
12 have been at least over the admin part of it would
13 have been Tammy. I don't know who in the DC would
14 have gathered or picked the product and shipped
15 it.

16 Q. In what way, if at all, did your
17 responsibilities or duties change after Walgreens
18 no longer distributed C-IIIs to C-Vs?

19 A. Well, we didn't have to look for the
20 overage orders for C-III through C-Vs anymore, and
21 that was pretty much about it from the SAIL
22 perspective.

23 Q. Everything stayed the same with the front
24 of the store items?

25 A. Yes.

1 Q. Everything stayed the same with the
2 regular pharmacy items?

3 A. Yes. For processing orders, yes.

4 Q. So you simply just -- you essentially
5 just had the one task removed from your job
6 duties?

7 A. Yes.

8 Q. Okay. If you go back to the second page,
9 do you see at the -- near the top of the page
10 there's a heading for C2s?

11 A. Yes.

12 Q. And, again, just like the last one, it's
13 going to be an e-mail that builds on itself with
14 updates -- do you see the original update that we
15 looked at before, and it said "Perrysburg will
16 continue to pick what they can until DEA comes and
17 shuts them down"?

18 A. Yes.

19 Q. And if you go down to -- excuse me -- do
20 you see the updates 2/27, about halfway down the
21 page?

22 A. Yes, I do.

23 Q. It says, "continue to service potentially
24 red flagged stores." Do you know what that means?

25 A. I don't.

1 Q. It says, "Rx purchasing team is working
2 on the stores. The plan is to send the store list
3 of the 367 stores to the distribution center by
4 end of day." Do you see that?

5 A. I do see that.

6 Q. If you'd go down four or five bullet
7 points, do you see the one that starts 367
8 potentially red flagged stores?

9 A. I do.

10 Q. It says, "Denny or Doug to determine what
11 we need to do to process orders for these stores
12 to account for the order redirects properly.
13 Redirects to Cardinal need to be stopped as
14 Cardinal is not fulfilling orders as they are
15 considered suspicious." Do you see that?

16 A. I do see that.

17 MS. ARENT: Objection to form.

18 Q. Did anybody at any time educate you on
19 the fact that Cardinal considered some of the
20 stores that Walgreens -- strike that. Let me
21 start over.

22 Did anybody at Walgreens ever inform you
23 that Cardinal Health had determined that some of
24 the orders being requested by some of the
25 Walgreens stores were considered suspicious?

1 MS. SWIFT: Object to the form.

2 MS. ARENT: Object to the form.

3 A. I was not aware that we had any stores
4 that were still red flagged, and I was also not
5 aware that Cardinal was the body that was filling
6 those orders and supposed to be getting them.

7 Q. Okay. Have you ever heard the term "red
8 flag" as it relates to a store?

9 A. No.

10 MS. SWIFT: Object to the form.

11 Q. And nobody ever told you that Cardinal
12 considered some of your stores to be suspicious?

13 MS. SWIFT: Object to the form.

14 A. I wasn't aware that Cardinal was handling
15 our orders, or that we had red flagged stores.

16 Q. I'll show you what I'll mark as Exhibit
17 23. It's P-WAG-2574.

18 - - - - -

19 (Thereupon, Deposition Exhibit
20 Walgreens-Diebert 23, April 11, 2013
21 E-mail WAGMDL00106910 - 00106912,
22 was marked for purposes of
23 identification.)

24 - - - - -

25 Q. Do you see at the top of the page this is

1 an e-mail from April 11, 2013?

2 A. Yes.

3 Q. And it's an e-mail from Steven Mills. Do
4 you recognize who that is?

5 A. I do recognize Steve Mills.

6 Q. How do you recognize him?

7 A. He's just one of our contacts at
8 corporate.

9 Q. For what purposes do you interact with
10 Mr. Mills?

11 A. My only contact with Steve is for new
12 stores that we have opening. He will let us know
13 when we have one that's opening. That's it.

14 Q. Okay. Can you turn with me, please, to
15 page 2, and I'm going to start at the bottom of
16 the page.

17 Do you see there's an e-mail at the
18 bottom of the page on April 10, 2013, and the
19 subject is "controlled substance order quantity
20 override form." Do you see that?

21 A. I do see that.

22 Q. Do you know what an override form is?

23 A. I know what the form is. I've not seen
24 the form before.

25 Q. What is the form?

1 A. To my knowledge, it's a form that the
2 store fills out if they want an item that is above
3 the limit that they're supposed to have set up for
4 their store.

5 Q. Okay. And what do you know about the
6 override process?

7 A. The store fills it out, Rx Integrity
8 reviews it, and they either approve or deny it.

9 Q. Do you in your role have any interaction
10 whatsoever with -- or excuse me -- any
11 responsibility whatsoever for approving or denying
12 an override request?

13 A. I do not.

14 Q. Does anybody at the distribution center
15 have any responsibility for approving or denying
16 an override request?

17 A. We do not.

18 Q. Do you know when this override request
19 process went into effect?

20 A. I don't.

21 Q. Okay. Well, anyway, do you see this is a
22 request, and it looks like it -- I think as you
23 mentioned, it looks like it was sent to Rx
24 Integrity. That would be consistent with your
25 understanding, right?

1 A. Yes.

2 Q. And it lists on the form the store
3 number, and if you keep going down, it looks like
4 this is a store from Austintown, Ohio. Do you see
5 that?

6 A. Yes.

7 Q. And the particular drug that they're
8 asking about is a hydrocodone product; do you see
9 that?

10 A. I do see that.

11 Q. And they need a 100-count bottle, and
12 they are asking for one; do you see that?

13 A. I do see that.

14 Q. And then they're asked to provide a
15 detailed explanation of their request, and their
16 explanation is "new customer," correct?

17 A. Reason for sales -- yes. New customer.

18 Q. Okay. If you go up -- go back to the
19 second page and go up one e-mail in the chain, it
20 looks like somebody on behalf of Rx Integrity
21 sends this to -- this is the group mail -- group
22 e-mail you mentioned earlier, the Perrysburg SAIL
23 coordinators?

24 A. Yes.

25 Q. And you would have been on there?

1 A. Yes.

2 Q. And it says, "please process the
3 following order." And it says to give them what
4 they ask for, the one bottle of the hydrocodone
5 product, correct?

6 A. Yes.

7 Q. And it looks like you responded to that
8 e-mail, correct?

9 A. Yes.

10 Q. And you said at that time "the Perrysburg
11 warehouse no longer carrier/ships CIII-V drugs.
12 You will need to contact the Mt. Vernon SAIL
13 office." Do you see that?

14 A. I do see that.

15 Q. Okay. And so you would certainly agree
16 with me that as of April 2013, Perrysburg was no
17 longer distributing C-III through C-Vs?

18 A. Yes.

19 Q. Let me show you P-WAG-2587.

20 - - - - -

21 (Thereupon, Deposition Exhibit
22 Walgreens-Diebert 24, E-mail
23 WAGMDL00324902 - 00324905, was
24 marked for purposes of
25 identification.)

1 - - - - -

2 Q. And if you look at the top of the page,
3 do you see this is an e-mail from Barb Martin, and
4 it looks like it went to Shelley Crisel, and I
5 think you told me she's in Perrysburg?

6 A. Mt. Vernon.

7 Q. I'm sorry, Mt. Vernon. And then you and
8 Ms. Bish were copied, correct?

9 A. Yes.

10 Q. Okay. And it says, "Shelley, below is
11 the COMPASS communication that was sent. Perhaps
12 the term was confusing to stores." And, anyway,
13 what I want to focus on is the communication that
14 was sent out to the -- to the pharmacies.

15 Do you see below there it has -- it looks
16 like she's copy and pasted the communication?

17 MS. SWIFT: Objection. Mischaracterizes
18 the document.

19 A. I do see that on the document.

20 Q. It says, "Select pharmacy managers.
21 Beginning the week of April 16, 2013, stores that
22 have been receiving their Schedule II controlled
23 substance orders from Cardinal will now have" all
24 their products -- have their -- "all products
25 under C-II orders shipped from AmerisourceBergen."

1 Do you see that?

2 A. I do see that.

3 Q. And is that consistent with your
4 understanding that at some point in time
5 AmerisourceBergen -- excuse me -- became the
6 primary distributor to the Walgreens stores?

7 MS. SCHUCHARDT: Objection to form.

8 A. Yes. At some point ABC became our
9 primary distributor for our controlled substances.

10 Q. Okay. And it looks that -- it looks like
11 that's at least beginning to be put in place here
12 in this communication that was sent to you on
13 April 26, 2013, correct?

14 MS. SWIFT: Objection. Foundation.

15 A. That's correct.

16 Q. Okay. So if we -- to kind of get a
17 picture of the -- of the general timeline, we know
18 that in early 2012 Walgreens began working with
19 the DEA on the settlement?

20 MS. SWIFT: Objection.

21 Q. Is that fair?

22 MS. SWIFT: Foundation.

23 A. I don't know when that began, when the
24 DEA started researching that.

25 Q. Do you recall a few minutes ago we looked

1 at the e-mail from Tasha Polster, and she was
2 sending the settlement, and she said, hey, we've
3 been working on this for about a year-and-a-half?

4 A. Yes.

5 Q. And that was a June e-mail; do you recall
6 that?

7 A. I remember that document, yes.

8 Q. Okay. Based on that document, would you
9 agree -- or excuse me -- based on that document,
10 would it be fair to say that Walgreens had been
11 working with the DEA on that settlement since
12 approximately early 2012?

13 MS. SWIFT: Objection. Foundation.

14 A. Based on that document, from what Tasha
15 says, yes.

16 Q. Okay. And then we saw in September of
17 2012 Jupiter distribution center was served with
18 an order to show cause, correct?

19 A. Yes.

20 MS. SWIFT: Object to the form.

21 Q. And then we saw in February of 2013,
22 Perrysburg is served with a warrant and subpoenas
23 from the DEA, correct?

24 MS. SWIFT: Object to the form.

25 Foundation.

1 A. I did see those documents, yes.

2 Q. And then by that last document that we
3 looked at in March of 2013, all the C-III to C-V
4 inventory has been transferred out of Perrysburg
5 to Mt. Vernon, correct?

6 MS. SWIFT: Object to the form.
7 Foundation.

8 A. That's correct.

9 Q. And here, in April of 2013, Walgreens is
10 now having AmerisourceBergen come in and take over
11 a lot of their drug shipments?

12 MS. SWIFT: Object to the form.

13 MS. SCHUCHARDT: Object to the form.

14 MS. SWIFT: Foundation.

15 A. Yes.

16 Q. And as of present, Walgreens no longer
17 distributes any controlled substances to itself,
18 correct?

19 A. That's correct. We don't distribute any
20 controlled substances.

21 Q. And has that been the case since you
22 became C2 manager?

23 A. That's the case, yes.

24 Q. And you became the C2 manager when?

25 A. In late 2014.

1 Q. Okay. So we know that the DEA begins
2 their investigation in 2012, and that by late
3 2014, at the earliest, Walgreens is completely out
4 of the distribution of controlled substance
5 business?

6 MS. SWIFT: Objection --

7 Q. Is that fair?

8 MS. SWIFT: Objection. Foundation.

9 A. Yes.

10 Q. Did anybody at Walgreens corporate, from
11 the business side, ever tell you why Walgreens got
12 out of the distribution business?

13 A. No. Nobody ever explained to me why we
14 weren't distributing controlled substances
15 anymore.

16 Q. Did you ever receive any communication
17 from anybody internally in the distribution center
18 about why Walgreens was ceasing to distribute
19 controlled substances?

20 A. Not that I recall.

21 Q. So I want to look at a couple of
22 documents now.

23 MR. GADDY: It looks like we need to go
24 off the record for a minute. I think we've been
25 going for a while.

1 THE VIDEOGRAPHER: Going off the record
2 at 2:21 p.m.

3 (Recess had.)

4 THE VIDEOGRAPHER: We're back on the
5 record at 2:39 p.m.

6 Q. Okay, Ms. Diebert. I'm going to ask you
7 some questions now regarding some changes that
8 were made in the 2012/2013 time period that would
9 have been after the DEA investigation had begun,
10 at least in Jupiter, and see which of these you're
11 familiar with or what you know about.

12 I'll show you what I'm going to mark as
13 Exhibit Number 25. This is P-WAG-2673.

14 - - - - -

15 (Thereupon, Deposition Exhibit
16 Walgreens-Diebert 25, May 30, 2012
17 E-mail WAGMDL00429424 - 00429426,
18 was marked for purposes of
19 identification.)

20 - - - - -

21 Q. And do you see that the -- kind of in the
22 middle of the page, there's an e-mail dated May
23 30, 2012 with the subject line of "meeting notes
24 to outline new procedures for distribution
25 centers"?

1 A. I see that.

2 Q. Okay. And it says, "Chris, I believe you
3 requested a document recapping the meeting. Would
4 you like this to go to DCMOs as a reference?" Do
5 you see that?

6 A. Yes.

7 Q. What does "DCMOs" mean?

8 A. Distribution center manager of
9 outbound -- I'm sorry -- manager of operations.

10 Q. Okay. And who would that have been in
11 Perrysburg around this time?

12 MS. SWIFT: Objection. Foundation.

13 A. I don't want to presume, but I'm assuming
14 that it is referring to our DC manager, who may
15 have been Steve Caneller at the time.

16 Q. And the topic of the notes, as far as the
17 new procedures for the distribution center, it
18 says "CII-V ordering." Do you see that?

19 A. I do see that.

20 Q. And the first item that it indicates as
21 far as a change, it says, "distribution centers
22 will no longer accept a phone call or e-mail from
23 a store related to adjusting CIII-CV orders." Do
24 you see that?

25 A. I do see that.

1 Q. Okay. And that was a change that was
2 implemented by Walgreens as far as ordering of
3 controlled substances, correct?

4 MS. SWIFT: Objection. Foundation.

5 A. Yes.

6 Q. Do you recall receiving a communication
7 from somebody at Walgreens that you were no longer
8 to accept phone calls or e-mails from stores
9 adjusting controlled substance orders?

10 A. I don't recall receiving any information.
11 But we did, or I wouldn't have instructed them to
12 contact other groups or parties.

13 Q. Okay. Item line number 7 on the updates
14 here says, "the PDQ process has not changed. PDQ
15 orders will filter through the inventory control
16 process." Do you see that?

17 A. I see that.

18 Q. Do you know what "PDQ" means?

19 A. No.

20 Q. Have you ever heard of a PDQ order?

21 A. I have.

22 Q. And what is your understanding of what
23 that means?

24 A. The only PDQ orders I'm aware of are
25 those for C-II, and that is any item that a store

1 wants to order that's a Schedule II narcotic that
2 they haven't reached their ceiling limit for, they
3 can order up to two of those per day on a PDQ
4 order.

5 Q. Okay. So is that something you've
6 learned about in your capacity as the Schedule II
7 manager?

8 A. Yes, it is.

9 Q. So that would be late 2014 or later?

10 A. Yes. It would have been after this.

11 Q. Okay. Did you have any understanding of
12 the PDQ process during the time that you were a
13 SAIL coordinator for C-III to C-V?

14 A. I did not.

15 Q. Okay. But regardless, here in this
16 document we see that they're instituting a policy
17 in May of 2012 to no longer accept phone calls or
18 e-mails to adjust controlled substance orders, but
19 also the PDQ process is staying in place, correct?

20 A. Yes. That's on here.

21 Q. Let me show you what I'll mark as Exhibit
22 26. It's P-WAG-2584.

23 - - - - -

24 (Thereupon, Deposition Exhibit
25 Walgreens-Diebert 26, E-mail

1 WAGMDL00308178 - 00308181, was
2 marked for purposes of
3 identification.)

4 - - - - -

5 Q. It looks like this is more of the
6 official communication as opposed to the notes.
7 And if you look at the top of this page, do you
8 see that this e-mail came from a woman named Sue
9 Thoss?

10 A. Yes.

11 Q. Do you know who Ms. Thoss is?

12 A. I -- I knew that she worked in corporate
13 as a president or vice president capacity. I
14 don't -- I didn't know her specifically, though.

15 Q. Okay. Have you ever had any interaction
16 with her?

17 A. No.

18 Q. And do you see here that this e-mail was
19 sent looks like about a week after that last one
20 we just looked at with the notes; do you see that?

21 A. Yes, I do.

22 Q. And one of the recipients on this line is
23 "DC SAIL coordinators;" do you see that?

24 A. I do.

25 Q. And that would be you?

1 A. Yes. I would be included.

2 Q. And in the body of the e-mail, it says,
3 "below is the new process that was sent to stores
4 related to controlled products CII-CV." Do you
5 see that?

6 A. Yes, I do.

7 Q. So then in the -- if we look down to the
8 communication that was sent, do you see it's
9 addressed to pharmacy supervisors and district
10 managers?

11 A. I do see that.

12 Q. And it says, "effective immediately, a
13 new process to manage the manual ordering of all
14 controlled substance medications will be
15 implemented and a new controlled substance order
16 quantity override form has been created. See
17 below for a summary of this new" product. Do you
18 see that? Or excuse me, "process."

19 A. I do see that.

20 Q. Okay. Were you aware of any override
21 process being in place prior to this?

22 MS. SWIFT: Objection. Foundation.

23 A. I'm not aware if they were using the
24 process or not.

25 Q. But, regardless, they refer to it here as

1 a new controlled substance order override process?

2 A. I see that they refer to it that way,
3 yes.

4 Q. It goes down and says, "what do we need
5 to know?" And it says for distribution centers it
6 says they "will not accept manual orders placed by
7 pharmacies via phone or e-mail." Do you see that?

8 A. I do see that.

9 Q. So this was a change that was being
10 implemented here in -- looks like June 5th of
11 2012?

12 MS. SWIFT: Objection. Foundation. The
13 document speaks for itself.

14 A. It says that on the document. My
15 personal experience was that we didn't take manual
16 orders while I was the SAIL coordinator.

17 Q. Who would manual orders have come into?

18 A. For C-III through V, while we were
19 distributing and while I was the SAIL coordinator,
20 they would have come through me, and we did not
21 take manual orders.

22 Q. Okay. So your process at Perrysburg, if
23 you had somebody try and make a manual order was
24 to reject it?

25 A. Yes. However, I don't recall that ever

1 happening. I don't ever recall the store calling
2 or e-mailing saying can you add some kind of a
3 C-III through V item on my order.

4 Q. Okay. If it never happened, how do you
5 recall that you would have rejected it?

6 A. Because we're not allowed to add orders
7 for controlled substances. So the only thing that
8 we would have ever done was delete or decrease it.

9 Q. And that's consistent with what you told
10 us earlier as it related to that excessive report,
11 excessive order report, that you would -- that you
12 would look at to make sure there were no errors,
13 correct?

14 A. Yes. We would look at overages, or large
15 orders, and if it didn't line up with what they
16 got, we would call them. If it was wrong, we
17 would decrease or delete it.

18 Q. You would call them to find out if they
19 made a mistake when they entered the order?

20 A. Yes.

21 Q. Are you familiar with what a line limit
22 is?

23 A. I am.

24 Q. What do you understand that to be?

25 A. For line limit, we use that in the

1 non-pharmacy side, and it's -- corporate will put
2 a limit as to how many of one particular item a
3 store can get.

4 Q. So that relates to products in the front
5 end of the store?

6 A. Yes.

7 Q. Can you give me an example of that?

8 A. Sure. Every December we have a lot of
9 photo promotions for Walgreens, and to enable all
10 the stores to get an opportunity to get some of
11 those items to process those orders, they put a
12 line limit of -- like, floating frames, they'll
13 only let the store get three cases instead of 50
14 that they want. That way more stores can get the
15 product in their stores.

16 Q. Are you ever familiar with line limits
17 being applied to controlled substance orders?

18 MS. SWIFT: Objection. Foundation.

19 A. We didn't check the orders for C-IIIs.
20 For C-III through Vs, I'm not aware if there was
21 or was not a line limit.

22 Q. What do you mean when you say you didn't
23 check them?

24 A. Well, the computer room is who checks for
25 C-II orders. And if there's -- I don't know what

1 other processes they use up there to check if
2 they're similar to what we did, but we didn't do
3 that. The only thing I do as a C2 manager is make
4 sure that the orders get signed. So I didn't
5 check anything on the ordering part for C-IIIs.
6 For C-III through V is when we did -- I'm not
7 aware if there was any kind of a line limit set in
8 place in the system or not.

9 Q. There was never any line limit for C-III
10 through Vs while you were a SAIL coordinator that
11 you were ever aware of; is that fair?

12 MS. SWIFT: Object to the form.

13 A. Not that I am aware of.

14 Q. I'll show you what I'll mark as Exhibit
15 Number 27. This is P-WAG-1743.

16 - - - - -

17 (Thereupon, Deposition Exhibit
18 Walgreens-Diebert 27, September 16,
19 2012 E-Mail WAGMDL00528179 -
20 00528180, was marked for purposes of
21 identification.)

22 - - - - -

23 Q. Do you see that at the top of the page
24 this is an e-mail -- and we'll primarily look at
25 the e-mail below, but it's an e-mail from

1 September 16, 2012?

2 A. Yes. I see that.

3 Q. And do you recall that's the same time
4 period that the order to show cause was served on
5 the Jupiter distribution center?

6 MS. SWIFT: Object to the form.

7 A. It was around that time, yes.

8 Q. And the subject of this particular e-mail
9 is "update on suspicious order monitoring." Do
10 you see that?

11 A. I do see that.

12 Q. And here, in September 2012, you would
13 have been the SAIL coordinator, right?

14 A. That's correct.

15 Q. If you go about halfway down that e-mail,
16 there's a heading that says "here is the current
17 suspicious order monitoring process in place." Do
18 you see that?

19 A. I do see that.

20 Q. It says, "all controlled substances C-II
21 through V and PSE orders generated through SIMS to
22 Walgreens distribution centers and vendors are
23 subject to our SOM tolerance frequency limits."
24 Do you see that?

25 A. I do see that.

1 Q. This says, "any order outside of our
2 parameters are automatically reduced by SIMS to be
3 in compliance with our standards." Do you see
4 that?

5 A. I do see that.

6 Q. And even in this time period, September
7 of 2012, did you have any knowledge of orders
8 being reduced in any way, shape, or form?

9 A. I do not.

10 MS. SWIFT: Object to the form.

11 Q. If you'd look down at the bottom of the
12 page, it says, "in addition to SOM, corporate line
13 limits have been placed on 23 C-II, C-III and C-IV
14 products." Do you see that?

15 A. I do see that.

16 Q. Did anybody inform you that that had
17 happened in September 2012?

18 A. I don't recall getting any communication
19 on it.

20 Q. Do you recall anything changing with how
21 you did your job as the C-III to V SAIL
22 coordinator?

23 MS. SWIFT: Object to the form.

24 A. No. I don't recall any adjustments to
25 our process.

1 Q. Do you recall any additional report
2 related to line limits that you received to help
3 you do your job during that time period?

4 A. I don't know that there were line limits
5 on C-III through V ordering, and I don't remember
6 any reports or communications revolving around
7 that.

8 Q. Do you see here in this particular
9 document, it says that line limits have been
10 placed on C-III and C-IV products, correct?

11 A. I see that.

12 Q. It then it goes on to say, "if a store
13 needs to order product above their tolerance or
14 frequency ceilings or more than the corporate line
15 limit, they must request that their pharmacy
16 supervisor completes a controlled substance order
17 override form." Do you see that?

18 A. I do see that.

19 Q. And we talked a little bit about that
20 already, right?

21 A. Yes, we did.

22 Q. And I think you told me that you as the
23 SAIL coordinator didn't have any involvement in
24 approving or denying any of those requests,
25 correct?

1 A. That's correct.

2 Q. It says, "this form is electronically
3 sent to the Rx purchasing inventory management
4 team." Do you see that?

5 A. I do see that.

6 Q. Who is that?

7 A. It's a group at corporate. I don't know
8 who's in that group.

9 Q. It says, "they forward the form to the
10 appropriate SAIL coordinator at the distribution
11 center servicing that store."

12 If you go to the last bullet point, it
13 says, "the SAIL coordinator then manually creates
14 an order per the request." Do you see that?

15 A. I do see that.

16 Q. Do -- as your -- as a SAIL coordinator,
17 did you receive some of these override requests?

18 A. Not as the SAIL coordinator for C-III
19 through V, no.

20 Q. Did you ever receive any communications
21 from the corporate folks that an override request
22 had been approved, and that you were to fill the
23 order?

24 MS. SWIFT: Object to the form.
25 Foundation.

1 A. Since I was a SAIL coordinator for C-III
2 through V, no, because I wasn't a SAIL coordinator
3 for C-II at the time. So I wouldn't have gotten
4 those, if there were any.

5 Q. Well, is it your understanding that the
6 overrides only applies to C-II?

7 A. That's my limited understanding of it,
8 because we didn't have them for C-III through V
9 that I recall.

10 Q. Okay. It goes on to say, it says, "note,
11 the Rx purchasing and supply chain inventory
12 management team does not evaluate the validity of
13 the form as it pertains to good faith dispensing,
14 only that it contains the proper information as
15 requested on the form." Do you see that?

16 A. I see that it says that.

17 Q. Did you know that the team at corporate
18 wasn't actually evaluating the validity of the
19 form?

20 MS. SWIFT: Object to the form.

21 A. I don't know what they do with the form
22 when they get the requests.

23 Q. All that you know is that it ultimately
24 comes to the distribution center and says approved
25 or not?

1 MS. SWIFT: Object to the form.

2 A. Actually, we only get the ones that are
3 approved. We don't see the denied ones.

4 Q. Okay. That makes sense.

5 I'll show you P-WAG-2013, Exhibit Number
6 28.

7 - - - - -

8 (Thereupon, Deposition Exhibit
9 Walgreens-Diebert 28, E-Mail
10 WAGMDL00278104, was marked for
11 purposes of identification.)

12 - - - - -

13 Q. And do you see this is an e-mail from
14 September 2012?

15 A. I do.

16 Q. And, again, it's consistent with the same
17 general time period that the order to show cause
18 is served on the Jupiter distribution center?

19 MS. SWIFT: Object to the form.

20 A. Yes, I do.

21 Q. And just skip down to the section that
22 says "to all." Do you see that?

23 A. I do.

24 Q. It says, "back in June, Rx purchasing and
25 supply chain placed line limits on several C-II

1 and C-III narcotics." Do you see that?

2 A. I do see that.

3 Q. And that's consistent with what we saw in
4 one of the documents a few minutes ago that talked
5 about them putting line limits on the controlled
6 drugs, correct?

7 A. On 23 of them, yes.

8 Q. It says, "at that time it was identified
9 that stores would be able to order drugs cut by
10 the line limit through PDQ. Supply chain and
11 logistics has identified a process in which they
12 can turn off specific items ordered through PDQ at
13 the distribution center level essentially capping
14 stores at the line limit quantity. This
15 enhancement will impact all stores in the chain."
16 Do you see that?

17 A. I see that, yes.

18 Q. Okay. Were you ever informed that even
19 though corporate had put line limits on controlled
20 substances, that stores were still able to get
21 around those line limits by placing PDQ orders?

22 MS. SWIFT: Objection. Assumes facts not
23 in evidence.

24 A. I was not aware that there was line
25 limits on them, or what the stores or the DCs

1 could or couldn't do with them.

2 Q. Do you recall having PDQ orders come in
3 while you were the SAIL coordinator?

4 MS. SWIFT: Object to the form. Vague.

5 A. Not for C-III through Vs, no.

6 Q. Do the PDQ orders that come in look
7 different than a regular order?

8 MS. SWIFT: Object to the form.

9 A. They're manual. Rx Integrity will e-mail
10 them to us requesting that we process them, and we
11 manually enter them and process them.

12 Q. I'm going to go back to Exhibit 4 for
13 just a minute, to the personnel file which should
14 be down towards the bottom there. If you would
15 turn to page 10 of 23 for me, please. This is
16 P-WAG-2670. Are you with me?

17 A. Yes, I am.

18 Q. Okay. Do you see it says C-II at the
19 bottom of the page?

20 A. Yes, sir.

21 Q. And it says, "I began managing the C-II
22 SAIL department this year. I trained multiple
23 days learning the details of the C-II SAIL
24 procedures." Do you see that?

25 A. Yes.

1 Q. You say, "received numerous request from
2 Rx Integrity each day ranging between 10 to 50 or
3 more orders. These orders are processed in one or
4 two emergency ways each day." Do you see that?

5 A. Yes, I do.

6 Q. What are you referring to there?

7 A. Those are the orders that they've
8 approved based on the override forms that the
9 stores submit.

10 Q. Okay. So -- and those are just for
11 C-IIIs, as you understand it?

12 A. Yes. That's my understanding.

13 Q. Okay. And the process for these
14 emergency waves of orders, is it the same as the
15 process for the normal orders?

16 MS. SWIFT: Object to the form. Vague.

17 A. It's not. These are manual orders that
18 we actually enter. They're not received by the DC
19 systematically like the stores' regular orders
20 are.

21 Q. But these orders that you're talking
22 about here are orders that have been approved for
23 an override?

24 A. That's correct.

25 Q. And would that range that you give there

1 of 10 to 50 a day be fairly accurate?

2 A. At that time it would have been, yes.

3 Q. What would you say that would be an
4 accurate range now?

5 A. Well, we've added more stores into the
6 network, so I would say on average we process
7 about between 50 to 75 Rx Integrity orders every
8 day now.

9 Q. Do you know what a 340-B order is for
10 controlled substances?

11 A. I know that we have 340-B orders that we
12 process once a week that we receive from the 340-B
13 group at corporate.

14 Q. Is there anything different that you have
15 to do with those orders than you do with either
16 your normal orders or the emergency orders?

17 MS. SWIFT: Object to the form.

18 A. None of those are electronic. They're --
19 all 340-B orders are printed to paper. They have
20 to have a cover sheet attached to them with
21 registrant -- the store information, and whoever
22 the supplier is, and then we send those out FedEx
23 overnight to the distribution centers that are
24 going to fill and ship those orders.

25 Q. But those come in to you as the C2

1 manager?

2 A. Yes.

3 Q. And you get them signed and send them out
4 to, I guess, AmerisourceBergen?

5 A. There are a couple of different
6 suppliers. ABC is one of them, AmerisourceBergen.
7 We also have some McKesson orders that we get.
8 Wright & Morrison, I think, is a newer one that
9 we've gotten a few for, and then Cardinal as well.

10 Q. So is there a difference in how you
11 process the PDQ orders now versus how you process
12 the override orders?

13 MS. SWIFT: Object to the form.

14 A. I'm sorry, maybe I misspoke. PDQ orders
15 are systematic. We receive them every day
16 systematically. Those aren't manual orders like
17 the Rx Integrity orders. So the Rx Integrity
18 orders, we manually enter those and process them
19 every day. PDQ orders are processed at the same
20 time that all the stores' weekly replenishment
21 orders are processed.

22 Q. Okay. Let me say it back to you so
23 that -- make sure I understand it.

24 So every day you get approximately 4,000
25 orders in from the Walgreens chains that you

1 service, correct?

2 A. Yes. That will be replenishment orders
3 and PDQ orders combined.

4 Q. Okay. And so when you say replenishment
5 orders, that would be normal ordering process for
6 the stores?

7 MS. SWIFT: Object to the form.

8 A. That's correct.

9 Q. What is a -- the normal replenishment
10 schedule? Can you explain that for me?

11 A. Most of our stores have a once a week
12 ordering. It's replenishment. Anything that
13 their replenishment level is set at at the store,
14 if it's below that, their system will generate an
15 order to get it up to that replenishment line. So
16 most stores have that order once a week. Some
17 stores have twice, they get twice a week
18 replenishment orders.

19 Q. Okay. And I guess the different stores
20 receive -- you have it spread out so that orders
21 come in on a daily basis, seven days a week?

22 MS. SWIFT: Object to the form.

23 A. Yes.

24 Q. And so when you get 4,000 orders in,
25 that's going to be comprised of regular

1 replenishment orders, which would be normal
2 orders, and also PDQ orders?

3 A. That's correct.

4 Q. Do you have an understanding for how many
5 of those approximately 4,000 orders are going to
6 be replenishment orders versus how many are going
7 to be PDQ orders?

8 A. Most of the days of our week we have
9 approximately 2,200 to 2,300 replenishment --
10 stores for replenishment orders on the schedule.
11 So out of 4,000, if you did the math, 2,300 would
12 be replenishment orders, the other 1,700 would be
13 PDQ orders.

14 Q. And when you're giving me these numbers,
15 you're talking about controlled substances,
16 correct?

17 A. Schedule II orders, yes.

18 Q. So 1,700 out of 4,000, again, using rough
19 numbers, of orders received on a daily basis are
20 PDQ orders versus replenishment orders?

21 A. That's correct.

22 Q. And do you understand PDQ to mean "pretty
23 darn quick"?

24 A. That's what I call it. I don't know what
25 the acronym really means.

1 Q. But those are orders that are received on
2 one day and filled the next morning?

3 MS. SWIFT: Object to the form.

4 A. For all of our stores that are in the
5 SESAS, all of their orders are filled and
6 delivered the next morning. They're filled
7 overnight and delivered the next morning.

8 Q. Okay. So the replenishment orders are
9 filled the next morning as well?

10 A. Yes.

11 Q. But the PDQ order would be an order that
12 essentially the store is receiving early; is that
13 fair?

14 MS. SWIFT: Object to the form.

15 A. I would -- I would say that a PDQ order
16 is an additional customer that they got come --
17 come in out of the normal that they didn't have
18 enough stock to fill that prescription for. Most
19 of the PDQ orders are for, like, one bottle of one
20 item.

21 Q. Okay. But regardless, the PDQ order is
22 when a store needs to receive an order prior to
23 the replenishment day?

24 A. Yes. That's correct.

25 Q. So currently there definitely are PDQ

1 orders allowed for scheduled drugs?

2 A. Yes.

3 Q. I'm going to show you a couple of these
4 documents that I was provided yesterday, and just
5 ask you some general questions about them and see
6 if you can help me understand what these are or
7 who they may have come from. The first one I want
8 to mark as Exhibit 29, the Bates range starts
9 757170.

10 - - - - -

11 (Thereupon, Deposition Exhibit
12 Walgreens-Diebert 29, Document
13 Request List, Perrysburg
14 Distribution Center, DEA review July
15 2011 WAGMDL00757170 - 00757171, was
16 marked for purposes of
17 identification.)

18 - - - - -

19 Q. And I have a black and white copy here,
20 but there should be a color copy on the screen
21 that may or may not be better.

22 Do you recognize generally what this
23 document is?

24 A. I don't. I haven't seen it before.

25 Q. At the top left-hand corner it says,

1 "document request list, Perry distribution center,
2 DEA review July 2011." Do you see that?

3 A. I do see that.

4 Q. At any time while you've been at
5 Walgreens have you had any involvement in audits
6 that occurred at the distribution center?

7 A. I did not.

8 Q. Do you know what -- do you know whether
9 or not audits occurred at the distribution center?

10 A. I do know that we had some audits. I
11 don't know if they were internal or out-ternal, if
12 we decided to do them on our own or not.

13 Q. Do you know what a DEA mini audit is?

14 A. I've heard the term, but I really don't
15 know what it is.

16 Q. Okay. Have you ever been involved in
17 one?

18 A. No, I have not.

19 Q. Have you ever had any responsibilities or
20 duties related to participating in any of the
21 audits?

22 A. Not that I recall.

23 Q. Who do you know at the -- or who at the
24 distribution center would you suggest I talk to
25 about that?

1 A. Tammy Hensley.

2 Q. And has Tammy been the admin manager as
3 long as you've been at Walgreens?

4 A. No. She was the SAIL coordinator before
5 me, so she moved to admin in 2008.

6 Q. Okay. So in -- assuming that Walgreens
7 was distributing C-IIIs through C-Vs prior to you
8 starting as the SAIL coordinator, Tammy would have
9 been the SAIL coordinator then?

10 A. Yes. If we were distributing them, then
11 before 2008 she would have been the SAIL
12 coordinator.

13 Q. Okay. And in 2008, when you became the
14 SAIL coordinator, she became the admin manager?

15 A. That's correct.

16 Q. Okay. And she would be the person that
17 you understand would have the most knowledge of an
18 audit process?

19 A. Yes.

20 Q. Why do you think that?

21 A. She's been the admin manager, she's the
22 one I've heard terms about DEA mini audits from,
23 just saying we have a mini audit that we're going
24 to do. She retains all the paperwork from those
25 audits when they do them.

1 Q. Anybody else at the distribution center
2 that you believe would have had involvement with
3 either internal audits, outside audits, or the DEA
4 mini audits?

5 MS. SWIFT: Objection. Foundation.

6 A. I don't know.

7 Q. Do you recognize the handwriting on this
8 document?

9 A. Yes. That is Tammy's handwriting.

10 Q. If we wanted to talk to somebody about
11 records that are kept at the distribution center,
12 would Tammy be the person to talk to about that
13 also?

14 A. She would be one of them, yeah.

15 Q. Who else?

16 A. I would be one of them for some of the
17 records, particularly MPB, which are just the
18 driver records that we keep on hand for two or
19 three years.

20 Q. Did you say "MPV"?

21 A. MPB. We do have a system for keeping
22 records, so if there were records that were
23 wanted, we can -- we should be able to find them.

24 Q. What system is that?

25 A. It's just our own internal location

1 system. We have a record showing where certain
2 documents are at from date ranges, and what type
3 of documents they are.

4 Q. Are you aware of any process within the
5 distribution center to purge or get rid of
6 records?

7 A. No.

8 Q. Have you ever been asked to purge or get
9 rid of records that are older or have been sitting
10 around for a long time?

11 A. Our MPB records that we had since we
12 opened, I believe last year they got rid of some
13 of those documents.

14 Q. What type of information would be within
15 those documents?

16 A. That would be the routes that the -- the
17 paperwork that the drivers took out with them,
18 where the stores put down the piece counts they
19 received and signed off on for their regular store
20 orders.

21 Q. Was that information maintained
22 electronically or in hard copy?

23 A. I know we kept the hard copies. I don't
24 know if it was kept electronically as well.

25 Q. But you know what you got rid of recently

1 was hard copies?

2 A. Yes.

3 Q. So I think we looked at this, but do you
4 see the top left-hand corner it says "document
5 request list"?

6 A. Yes.

7 Q. And the first item that it asks about is
8 copies of last DEA report or internal distribution
9 center reports relating to DEA visits; do you see
10 that?

11 A. I see that.

12 Q. Okay. And are you aware of any DEA
13 reports or internal distribution center reports
14 regarding DEA visits?

15 A. I am not.

16 Q. Is that anything that you've ever seen
17 before?

18 A. No.

19 Q. If you go down to the very bottom of the
20 page, number 20, one of the documentations it's
21 talking about is a copy of the sale coordinator
22 tracking sheet?

23 A. I see that.

24 Q. And it looks like it says Jen and Deb
25 next to it; do you see that?

1 A. Yes, I do.

2 Q. I'm presuming that that would be you. Do
3 you know what's being referred to there?

4 A. I believe that that is referring to the
5 sheet that the loaders signed off when they loaded
6 a controlled tote or case onto their truck. They
7 would keep it, they would sign off on it, and file
8 it.

9 Q. And what type of information would be on
10 that form?

11 A. It would have the date, the store number
12 that the item belonged to, the unique scan ID that
13 was assigned to that tote so that it could be
14 tracked, and then the loader -- the trailer
15 number, route number, and then the loader's
16 signature on it.

17 Q. When you were the SAIL coordinator, did
18 you have physical access to the C-III through C-V
19 drugs?

20 A. I did not.

21 Q. If you look at the next page, at the item
22 number 21, it lists it looks like eight different
23 items there of records. Do you see that?

24 A. I do see that.

25 Q. And do you see number 7 says "monthly

1 suspicious controlled drug order report"? Do you
2 see that?

3 A. I see that on there.

4 Q. And, again, we looked at some of those
5 this morning. You're not familiar with those,
6 correct?

7 A. I am not familiar with those.

8 Q. And in the column to the right where it
9 says who's responsible, it's indicating that would
10 be Tammy?

11 A. That's correct.

12 Q. I'm going to show you what I'll mark as
13 Exhibit Number 30. It starts out at Bates number
14 757188.

15 - - - - -

16 (Thereupon, Deposition Exhibit
17 Walgreens-Diebert 30, Perrysburg
18 Distribution Center DEA Review
19 WAGMDL00757188 - 00757192, was
20 marked for purposes of
21 identification.)

22 - - - - -

23 Q. And, again, this is one I just got last
24 night, so I think you'll have a color copy that
25 will pop up on the screen there.

1 And the first two pages of this looks
2 pretty much the same. Do you recognize this to be
3 your document in your handwriting?

4 A. No. That's -- I think that's Tammy's
5 handwriting again, too, but there's very little on
6 there.

7 Q. Okay.

8 A. That's her handwriting on the second
9 page.

10 Q. Okay. And if you flip to the third page,
11 same thing, again, it appears to be Tammy's
12 handwriting?

13 A. Yes. That's Tammy's handwriting.

14 Q. If you go to the last page of the
15 document, it says, "daily agenda Perrysburg
16 distribution center DEA review." Do you see that?

17 A. Yes.

18 Q. Would you have been involved in this
19 process?

20 MS. SWIFT: Object to the form.

21 A. No.

22 Q. And under Monday, in the box with item 2,
23 it has the name Scott Brown. Do you know who that
24 is?

25 A. I do. He's no longer with Walgreens.

1 Q. What was his role when he was there?

2 A. He was the shipping function manager.

3 Q. What does the shipping function manager
4 do?

5 A. They would make sure they had loaders
6 assigned to the doors that were being loaded into,
7 that all the product was getting put on the
8 trailers.

9 Q. In the Wednesday box, do you see an item
10 number 2, it says "afternoon"?

11 A. I do.

12 Q. And it says "interviews," and it says
13 "ARCOS Rx manager and SAIL." Do you see that?

14 A. I do see that.

15 Q. And at this time you would have been the
16 SAIL, correct?

17 MS. SWIFT: Object to the form.

18 A. Yes. I was the SAIL coordinator in 2012.

19 Q. Do you recall participating in interviews
20 with the DEA during this time period?

21 A. No, I do not.

22 MS. SWIFT: Object to the form.

23 Q. Do you know that you didn't, or do you
24 just not remember?

25 A. I don't recall ever talking to a DEA

1 agent.

2 Q. Do you ever recall DEA being at
3 Perrysburg and at the distribution center in any
4 form or fashion?

5 MS. SWIFT: Objection. Asked and
6 answered.

7 A. I don't recall when the DEA was there. I
8 know that they were there, but I couldn't tell you
9 dates, or what they were there for.

10 Q. Sure. So -- sorry, that was a bad
11 question. So we looked at documents earlier that
12 talked about exactly when they came in to inspect,
13 correct?

14 A. Yes.

15 Q. Okay. What I meant to ask you is if
16 you've ever -- whether that time or any other time
17 while you've been at Perrysburg, have you ever
18 seen DEA agents within the facility?

19 A. I have not seen any DEA agents in the DC.

20 Q. I had asked you earlier about whether or
21 not you had ever been asked to purge or destroy
22 any older documents. Do you know -- if I was --
23 if I was wanting to know who did that at the
24 Perrysburg distribution center, who would you
25 suggest I talk to?

1 MS. SWIFT: Object to the form. Vague.

2 A. I'm not sure. I may even be able to find
3 that information out. I would have to look once I
4 got back to work. Tammy may also know that, but
5 our HR department may also know, too. I really am
6 not sure.

7 - - - - -

8 (Thereupon, Deposition Exhibit
9 Walgreens-Diebert 31, August 13,
10 2012 E-Mail WAGMDL00757172 -
11 007571187, was marked for purposes
12 of identification.)

13 - - - - -

14 Q. I'll show you what I'll mark as Exhibit
15 Number 31. This is -- it begins with Bates
16 757172.

17 And, again, this is a document I just got
18 yesterday, so I think you might have a color copy
19 on the screen, but I just have a black and white
20 that I was able to print out downstairs.

21 Do you recognize the handwriting on this
22 document?

23 A. That's Tammy's handwriting as well.

24 Q. Do you retain any documents -- it looks
25 like Tammy collected some items that for whatever

1 reason she thought were significant to her and her
2 job duties and kept them where they were
3 accessible to her. Do you do anything like that
4 with any correspondence or documents?

5 MS. SWIFT: Object to the form.

6 A. I can't think of any correspondence that
7 I would keep hard copies of, because it's all
8 electronic already.

9 Q. Ms. Diebert, I think that's all I got for
10 you today. Thank you.

11 MS. SWIFT: I just have a few questions.
12 Do you want to take a break first, or do you want
13 to go ahead and get it done?

14 THE WITNESS: I'm okay.

15 EXAMINATION OF JENNIFER DIEBERT

16 BY MS. SWIFT:

17 Q. Good afternoon, Ms. Diebert. How are you
18 doing?

19 A. I'm good. How are you?

20 Q. I'm all right, thanks.

21 Have you always lived in the State of
22 Ohio?

23 A. I have.

24 Q. Have you always lived in the Perrysburg
25 area?

1 A. No. I actually grew up in Norwalk, which
2 is a little bit south of Sandusky.

3 Q. About how far from Cleveland is that?

4 A. About an hour.

5 Q. When did you move to the Perrysburg area?

6 A. When I was going to college at Bowling
7 Green State University in the late '90s.

8 Q. Is Bowling Green also in Ohio?

9 A. It is.

10 Q. Are you married?

11 A. I am.

12 Q. Do you have kids?

13 A. Yes. We have four daughters ranging from
14 14 to 21.

15 Q. And are any other members of your family
16 employees of the Perrysburg distribution center?

17 A. Yes. Actually, my oldest daughter just
18 recently started working there, and my husband
19 worked there as a senior maintenance tech. He's
20 working with Prometeca now, but he would like to
21 go back.

22 Q. How long did your husband work at the
23 Perrysburg distribution center?

24 A. He was not there long. About two years.

25 Q. Am I right that you have worked at

1 Perrysburg since about 2003?

2 A. Yes.

3 Q. Have you ever had -- in your employment
4 at Walgreens at the Perrysburg distribution
5 center, have you ever had any distribution-related
6 responsibilities for C-II controlled substances?

7 A. No, I have not.

8 MR. GADDY: Objection to form.

9 MS. SWIFT: What's the basis of the form
10 objection?

11 MR. GADDY: She testified that she didn't
12 have responsibilities for that, to the extent that
13 it mischaracterizes her testimony.

14 MS. SWIFT: She's testified that she did
15 or that she didn't? I'm sorry, I just didn't hear
16 what you said.

17 MR. GADDY: That she didn't.

18 MS. SWIFT: Let me ask the question
19 again.

20 Q. And please tell me if I'm
21 mischaracterizing your testimony at any point,
22 okay?

23 A. Okay.

24 Q. Since you've worked for Walgreens at the
25 Perrysburg distribution center, have you ever had

1 distribution-related responsibilities for C-II
2 controlled substances?

3 MR. GADDY: Objection to form.

4 A. No, I have not.

5 Q. At a certain point in time while you
6 worked for Walgreens at the Perrysburg
7 distribution center, have you had certain
8 responsibilities for C-III through V controlled
9 substances?

10 A. Yes, I have.

11 Q. Am I right that you haven't had any
12 distribution-related responsibilities for any
13 controlled substances since around 2013?

14 MR. GADDY: Objection to form.

15 A. That's correct.

16 Q. So it's been a long time since you had
17 any distribution-related responsibilities at the
18 distribution center; is that right?

19 MR. GADDY: Same objection.

20 A. That's correct.

21 Q. Do you recall questions earlier today
22 about whether you were ever asked to look out for
23 large orders of C-II controlled substances once
24 you became a C2 manager?

25 A. Yes, I do.

1 Q. When you became a C2 manager at the
2 Walgreens Perrysburg distribution center, was
3 Walgreens distributing C-IIs at that point in
4 time?

5 A. No, we were not.

6 Q. Would there have been any reason for you
7 to look out for large orders of controlled
8 substances once you became a C2 manager?

9 MR. GADDY: Objection to form.

10 A. No, there wouldn't.

11 Q. Is that because Walgreens was no longer
12 distributing controlled substances, or for some
13 other reason?

14 MR. GADDY: Objection to form.

15 A. It's because Walgreens was no longer
16 distributing controlled substances, and the orders
17 that came in were not checked by C2. The computer
18 room checked those orders.

19 Q. Am I right that the entire time you've
20 been the C2 manager, a third-party distributor has
21 handled the actual distribution of the orders that
22 you handle?

23 A. Yes.

24 Q. You became the C2 manager in late 2014;
25 is that right?

1 A. That's correct.

2 Q. As the C2 manager since late 2014, have
3 you ever had any responsibilities with respect to
4 C-III through V drugs?

5 A. No, I have not.

6 Q. Do you recall earlier today, Ms. Diebert,
7 you got a lot of questions about suspicious
8 controlled drug order reports, suspicious order
9 monitoring, and the term "suspicious orders" was
10 used a fair amount; do you recall that
11 questioning?

12 A. Yes, I do.

13 Q. Is that terminology around suspicious
14 orders or suspicious order monitoring the kind of
15 terminology that you used ever typically in your
16 day-to-day?

17 A. No, it was not.

18 Q. Back when Walgreens was still
19 distributing controlled substances, was it ever
20 part of your job to make sure that Walgreens
21 wasn't processing orders of excessive quantities
22 of controlled substances?

23 A. It was.

24 Q. And when I say "excessive quantities,"
25 was it also part of your job to make sure that

1 Walgreens wasn't shipping orders of unusual size?

2 MR. GADDY: Objection to form.

3 A. Yes. We would look for any large orders
4 and compare them against their history.

5 Q. Did you take steps in your job to make
6 sure that at least as part of your job Walgreens
7 wasn't shipping orders of excessive quantities or
8 unusual size?

9 MR. GADDY: Objection to form.

10 A. Yes.

11 Q. Do you have any knowledge of Walgreens
12 ever shipping excessive quantities of any products
13 to a Walgreens store?

14 MR. GADDY: Objection to form.

15 A. I don't have any personal knowledge of
16 that happening.

17 Q. Do you have any knowledge of Walgreens
18 ever shipping controlled substances into
19 illegitimate channels?

20 MR. GADDY: Objection to form.

21 A. No, I don't.

22 Q. To the extent that other departments at
23 Walgreens were evaluating orders, investigating
24 orders, doing diligence on orders, running queries
25 on orders, would you have known about it?

1 A. I would not have.

2 Q. Do you recall earlier today you got a
3 series of questions, I'll call them timeline
4 questions, where counsel referred to a series of
5 documents that you've never seen before to try to
6 put together a timeline, I believe he used the
7 word "timeline" a couple of times. Do you
8 remember those questions?

9 A. I do.

10 Q. Do you have any personal knowledge of the
11 timeline of any of the events in the documents
12 that counsel showed you that you hadn't seen
13 before?

14 A. I don't.

15 MR. GADDY: Objection to form.

16 MS. SWIFT: I don't have any other
17 questions. Thank you very much.

18 EXAMINATION OF JENNIFER DIEBERT

19 BY MR. GADDY:

20 Q. Ms. Diebert, I want to make sure I
21 understand. I thought I did, but I want to make
22 sure I understand your role as it relates to the
23 excessive quantity or the excessive orders that
24 you were -- that you were looking at. Do you know
25 what I'm talking about?

1 MS. SWIFT: Object to the form.

2 A. Yes. The large orders.

3 Q. And it would be fair to say that your
4 goal in looking at that report was to -- was to
5 catch orders that were entered by the stores in
6 error?

7 MS. SWIFT: Object to the form.

8 A. It was.

9 MS. SWIFT: Outside the scope.

10 A. Yes. We wanted to see if there were any
11 large orders that were unusual for the stores.

12 Q. Well, you were trying to find orders that
13 were -- that were entered in error, correct?

14 MS. SWIFT: Object to the form. Asked
15 and answered.

16 A. We don't know if they were entered in
17 error or if they were system-generated. We just
18 wanted to check on any large orders that we
19 received.

20 Q. Okay. And I think you told us that in
21 the entire time that you worked with -- in C-III
22 to C-V as a SAIL coordinator, you don't recall
23 ever having any drugs pop on that report?

24 MS. SWIFT: Object to the form.

25 A. No. I don't recall that happening.

1 Q. Okay. And I think we looked at the one
2 document from -- that had the e-mail from Matt Nye
3 where he said that the limit that they used for
4 the Schedule II drugs was 100 units, and that they
5 would call a pharmacy if they saw anything over
6 100 units flag on a report. Do you recall that?

7 A. I remember seeing that document referring
8 to C-IIIs that computer room checked orders for.

9 Q. Okay. And you don't recall what the
10 number was that would trigger you to do any type
11 of follow-up or investigation, do you?

12 A. I don't remember what the number -- the
13 threshold was for C-III through Vs when we checked
14 those orders.

15 Q. And you don't recall that you've ever in
16 the entire time that you were a SAIL coordinator,
17 you don't recall ever once calling a pharmacy and
18 asking them about a C-III through V order, do you?

19 A. No. I don't recall having to do that.

20 Q. And if you were to have called them and
21 asked them about a C-III through V order, the
22 intention of that call, or the purpose of that
23 call would have been to make sure that the order
24 that they entered in the report was entered
25 correctly and that it was not a mistake, correct?

1 MS. SWIFT: Objection. Hypothetical.

2 A. That is correct. We would want to make
3 sure that the order was legitimate and not
4 invalid.

5 Q. And I think we looked at the one example
6 where there was some forms that were copied and
7 pasted into the document where somebody had really
8 wanted 3 units and they actually entered 300; do
9 you recall that?

10 A. We did see that example.

11 Q. And those are the types of things that
12 you were looking for, where you had fat finger
13 type errors as far as entry mistakes, correct?

14 A. They could be fat finger, but they also
15 could be system-generated errors -- or orders. We
16 don't know how the orders got in the system. We
17 were just checking the orders that were in there.

18 Q. Okay. But regardless, at no time while
19 you were the SAIL coordinator at Perrysburg do you
20 ever recall calling a pharmacy and cutting an
21 order for a controlled substance?

22 MS. SWIFT: Object to the form.

23 A. No. I do not recall ever having to do
24 that.

25 Q. Okay. No more questions.

1 THE VIDEOGRAPHER: Going off the record
2 at 3:35 p.m. This concludes the videotaped
3 deposition of Ms. Diebert.

4 (The deposition was concluded at 3:35
5 p.m.)

6 SIGNATURE:

7 It was agreed by and between counsel and the
8 parties that the Deponent will read and sign the
9 transcript of said deposition.

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CERTIFICATE

The State of Ohio,)

SS:

County of Cuyahoga.)

I, Todd L. Persson, a Notary Public within and for the State of Ohio, duly commissioned and qualified, do hereby certify that the within named witness, JENNIFER DIEBERT, was by me first duly sworn to testify the truth, the whole truth and nothing but the truth in the cause aforesaid; that the testimony then given by the above-referenced witness was by me reduced to stenotypy in the presence of said witness; afterwards transcribed, and that the foregoing is a true and correct transcription of the testimony so given by the above-referenced witness.

I do further certify that this deposition was taken at the time and place in the foregoing caption specified and was completed without adjournment.

I do further certify that I am not a relative, counsel or attorney for either party, or otherwise interested in the event of this action.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal of office at Cleveland, Ohio, on this 29th day of January, 2019.

Todd L. Persson, Notary Public
within and for the State of Ohio

My commission expires August 1, 2022.

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E R R A T A

2 - - - - -

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4 PAGE LINE CHANGE

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ACKNOWLEDGMENT OF DEPONENT

I, _____, do
hereby certify that I have read the
foregoing pages, and that the same is
a correct transcription of the answers
given by me to the questions therein
propounded, except for the corrections or
changes in form or substance, if any,
noted in the attached Errata Sheet.

JENNIFER DIEBERT DATE

Subscribed and sworn
to before me this
_____ day of _____, 20____.
My commission expires: _____

Notary Public